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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON:

THE CONSIDERATION OF THE CRIMINAL PROCEDURE
CODE (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 11 OF 2026)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 25 AUG 2026	
DAY: TUE	
TABLED BY:	HON. GEORGE MURUGARA, MP CHAIRPERSON
CLERK-AT THE-TABLE:	V. WAMBUI

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

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LIST OF ABBREVIATIONS AND ACRONYMS

AG	-	Office of the Attorney-General
CAJ	-	Commission on Administrative Justice
CBS	-	Chief of the Order of the Burning Spear
DPP	-	Director of Public Prosecutions
EBS	-	Elder of the Order of the Burning Spear
EGH	-	Elder of the Order of the Golden Heart
FIDA-K	-	Federation of Women Lawyers-Kenya
FORD	-	Forum for the Restoration of Democracy
KLRC	-	Kenya Law Reform Commission
KNCHR	-	Kenya National Commission on Human Rights
MCCP	-	Maendeleo Chap Chap Party
MGH	-	Moran of the Order of the Golden Heart
MP	-	Member of Parliament
NCAJ	-	National Council on the Administration of Justice
NCCS	-	National Council for Children's Services
NIS	-	National Intelligence Service
ODM	-	Orange Democratic Movement
ODPP	-	Office of the Director of Public Prosecutions
OGW	-	Order of the Grand Warrior
UDA	-	United Democratic Alliance
UDM	-	United Democratic Movement
WDM	-	Wiper Democratic Movement
WPA	-	Witness Protection Agency

LIST OF ANNEXURES

- Annexure 1: Adoption Schedule
- Annexure 2: Minutes
- Annexure 3: Criminal Procedure Code (Amendment) Bill (*National Assembly Bill No. 11 of 2026*)
- Annexure 4: Advertisement inviting the public to submit memoranda on the Bill
- Annexure 5: Letter from the Clerk of the National Assembly inviting key stakeholders to a meeting to submit views on the Bill
- Annexure 6: Memoranda by Stakeholders

CHAIRPERSON'S FOREWORD

This Report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Criminal Procedure Code (Amendment) Bill (*National Assembly Bill No. 11 of 2026*). The Bill was published in the Kenya Gazette on 13th March 2026 and was read a First Time in the House on 16th April 2026. Pursuant to Standing Order 127(1), the Bill was committed to the Committee for consideration and reporting to the House.

The Bill seeks to align the Criminal Procedure Code, Cap. 75 with the Constitution, particularly Articles 27, 28, 29, 31, 39, 48, 49, 50, and 51 which protect equality, dignity, liberty, privacy, property, access to justice, fair trial rights, and the rights of arrested and detained persons. Similarly, the Bill seeks to enhance procedural efficiency, professionalism, accountability, and the effective functioning of the criminal justice system.

The Bill further reviews provisions relating to transfer of cases between magistrates, suspended sentences, entering of *nolle prosequi*, official court languages, forfeiture of property, disposal of forfeited goods, and release of exhibits. It introduces special procedural safeguards for persons with mental illness and aligns the Act with the Mental Health Act, Cap. 248.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on 18th April 2026, inviting the public to submit memoranda in the form of written statements on the Bill. In addition, the Committee, vide a letter referenced NA/DDC/JLAC/2026/050 dated 24th June 2026 invited key stakeholders to submit views on the Bill and to attend a public participation forum on 2nd July 2026. The memoranda were to be received on or before 4th May 2026 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received fourteen (14) memoranda.

The Judiciary, Office of the Attorney-General, State Department for Internal Security and National Administration, State Department for Correctional Services, National Intelligence Service, Office of the Director of Public Prosecutions, Commission on Administrative Justice, Kenya National Commission on Human Rights, Witness Protection Agency, Kenya Law Reform Commission, National Council for Children's Services, Federation of Women Lawyers in Kenya, Kituo cha Sheria, and Katiba Institute and Reprieve UK submitted their views on the Bill which the Committee considered in the preparation of this Report.

While considering the Bill, the Committee observed that the Bill is a culmination of proposals developed over years of consultation among state and non-state agencies in the criminal justice system under the stewardship of the National Council on the Administration of Justice. The Bill therefore seeks to align the criminal procedure with the Constitution and subsequent statutory reforms and developments in the administration of justice.

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 all the stakeholders who submitted their views on the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who sat for long hours and 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), it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the Criminal Procedure Code (Amendment) Bill, 2026 (*National Assembly Bill No. 11 of 2026*).

It is my pleasure to report that the Committee has considered the Criminal Procedure Code (Amendment) Bill, 2026 (*National Assembly Bill No. 11 of 2026*) and has the honour to report back to the National Assembly with the recommendation that the **House approves the Bill** with the amendments contained in the Schedule of Amendments forming Chapter Six of this Report.



Hon. George Gitonga Murugara, CBS, MP
Chairman, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

I PREFACE

I.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:

- (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;*
- (c) To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- (d) To study and review all legislation referred to it;***
- (e) 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;*
- (f) 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;*
- (g) 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);*
- (h) To examine treaties, agreements and conventions;*
- (i) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
- (j) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- (k) To examine any questions raised by Members on a matter within its mandate.*

I.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 oversights the following Ministries, Departments and Agencies:

- a) The Judiciary;
- b) Judicial Service Commission;
- c) State Department for Correctional Services;
- d) State Law Office and Department of Justice;
- e) State Department for Justice, Human Rights and Constitutional Affairs;
- f) Office of the Director of Public Prosecutions;
- g) Ethics and Anti-Corruption Commission;
- h) Independent Electoral and Boundaries Commission;
- i) Commission on Administrative Justice;
- j) Office of the Registrar of Political Parties;
- k) Witness Protection Agency;
- l) Kenya National Commission on Human Rights;
- m) Kenya Law Reform Commission; and
- n) Council of Legal Education.

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, CBS, MP
Rarieda Constituency
ODM Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Mogaka Stephen M., MP
West Mugirango Constituency
Jubilee Party

Hon. Timothy Kipchumba Toroitich, MP
Marakwet West Constituency
Independent

Hon. Harold Kimuge Kipchumba, MP
Nominated Member
ODM Party

Hon. CPA Suleka Hulbale Harun, MP
Nominated Member
UDM Party

I.4 Committee Secretariat

5. The Committee is facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Ronald Walala
Principal Legal Counsel

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Samuel Wanjiru
Clerk Assistant III

Mr. Omar Abdirahim
Fiscal Analyst I

Mr. Isaac Nabiswa
Legal Counsel I

Ms. Vivienne Ogega
Research Officer III

Mr. John Nduaci
Serjeant-At-Arms

Ms. Rahab Chepkilin
Audio Officer III

Ms. Rhoda Muchiri
Hansard Officer III

Mr. Wilson Murimi
Media Relations Officer III

Ms. Esther Mbatha
Public Communications Officer III

CHAPTER TWO

2 OVERVIEW OF THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 11 OF 2026)

2.1 Background

6. The Bill, sponsored by the Departmental Committee on Justice and Legal Affairs arising from its deliberations on proposals submitted by the National Council on the Administration of Justice (NCAJ), was read a First Time in the House on 16th April 2026 (*Annexure 3*). It was thereafter committed to the Committee in line with Standing Order 127(1) of the National Assembly Standing Orders.

2.2 Summary of Legal Provisions

7. The Bill seeks to align the Criminal Procedure Code, Cap. 75 with the Constitution, particularly Articles 27, 28, 29, 31, 39, 48, 49, 50, and 51 which protect equality, dignity, liberty, privacy, property, access to justice, fair trial rights, and the rights of arrested and detained persons. Similarly, the Bill seeks to enhance procedural efficiency, professionalism, accountability, and the effective functioning of the criminal justice system.
8. The Bill further reviews provisions relating to transfer of cases between magistrates, suspended sentences, entering of *nolle prosequi*, official court languages, forfeiture of property, disposal of forfeited goods, and release of exhibits. It introduces special procedural safeguards for persons with mental illness and aligns the Act with the Mental Health Act, Cap. 248.
9. In particular:
 - (a) **Clause 2** which amends the Act to, among others, introduce definitions of “person with mental illness” and “intersex person.”;
 - (b) **Clause 7** which amends the Act to ensure that a suspended sentence shall not exceed the statutory term prescribed for the offence;
 - (c) **Clause 8** which inserts a new section 27A in the Act prescribing procedures for searching an intersex person, requiring respect for dignity consistent with Article 28 of the Constitution;
 - (d) **Clauses 10–29** which repeal sections 43–61A of the Act relating to security for keeping the peace and good behaviour. These provisions permit pre-emptive arrest and bond execution based on suspicion without trial, contrary to Articles 27, 28, 39, 49, and 50(2) of the Constitution;
 - (e) **Clause 35** which amends the Act to require that a *nolle prosequi* may only be entered with leave of the Court;
 - (f) **Clause 42** which amends section 131(3) of the Act to allow forfeiture of immovable property deposited as security for bail or bond;
 - (g) **Clauses 49 and 50** which repeal and replace sections 162 and 167 of the Act to establish procedures and timelines for handling accused persons found unfit to stand trial, including treatment and periodic review;

- (h) **Clause 51** which repeals section 167 that currently permits detention of persons with mental illness at the pleasure of the President for an indeterminate period;
- (i) **Clause 53** which amends the Act to permit the use of computers in recording evidence;
- (j) **Clause 54** which amends section 198 to designate Kiswahili, English, and Kenyan Sign Language as the languages of the court, in accordance with Article 7 of the Constitution;
- (k) **Clause 61** which amends section 280 of the Act to remove provisions permitting indefinite detention of accused persons with mental illness at the pleasure of the President;
- (l) **Clause 80** which inserts new sections 389B and 389C in the Act to provide for disposal of forfeited goods by the Chief Registrar of the Judiciary in accordance with the Public Procurement and Asset Disposal Act, 2015, and for release of exhibits to rightful owners; and
- (m) **Clause 83** which inserts a new section 395 in the Act establishing the Criminal Procedure Rules Committee with power to make and review rules governing criminal procedure.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

10. Article 118 (1)(b) of the Constitution provides that:

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”

11. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

“(3) 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.

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

3.2 Memoranda Received on the Bill

12. Pursuant to the aforementioned provisions of the law, the Committee placed an advertisement in the print media on 18th April 2026 (Annexure 4) inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide a letter referenced NA/DDC/JLAC/2026/050 dated 14th June 2026 (Annexure 5) invited key stakeholders to submit views on the Bill and attend a public participation forum on 2nd July 2026.

13. To this end, the Committee received fourteen (14) memoranda from the Judiciary, Office of the Attorney-General (AG), State Department for Internal Security and National Administration, State Department for Correctional Services, National Intelligence Service (NIS), Office of the Director of Public Prosecutions (ODPP), Commission of Administrative (CAJ), Kenya National Commission on Human Rights (KNCHR), Witness Protection Agency (WPA), Kenya Law Reform Commission (KLRC), National Council for Children's Services (NCCS), Federation of Women Lawyers in Kenya (FIDA-K), Kituo cha Sheria, and Katiba Institute and Reprieve UK. The memoranda are annexed to this Report as Annexure 6.

14. In addition, the Judiciary, NCAJ, AG, State Department for Internal Security and National Administration, NIS, CAJ, WPA, KNCHR, KLRC, FIDA-K and NCCS attended the public participation forum on 2nd July 2026 while the ODPP and the State Department for Correctional Services appeared before the Committee on 4th August 2026 and submitted their views on the Bill.

3.2.1 Submissions in Support of the Bill

15. The AG supported the Bill in its entirety noting that it does not raise any significant constitutional or statutory issues.

16. The CAJ supported the Bill in its entirety noting that the proposals are consistent with the Commission's constitutional mandate of promoting administrative justice, good governance,

accountability and the protection of the right to fair administrative action whilst advancing a more efficient, effective and rights-based criminal justice system.

3.2.2 Submissions on Proposed Amendments

17. Whilst proposing amendments to the Bill, the Judiciary, State Department for Internal Security and National Administration, State Department for Correctional Services, NIS, ODPP, KNCHR, WPA, KLRC, NCCS, FIDA-K, Kituo cha Sheria, and, jointly, Katiba Institute and Reprieve UK submitted as follows:

Clause 2

18. The State Department for Correctional Services proposed inserting new definitions of 'correctional facility' 'officer in charge of a correctional facility' to harmonize with existing legislation and to align with modern correctional terminology.
19. NIS proposed introducing the definition of the term "computer" as used in the proposed amendment to section 197 in clause 53 to align with other laws.
20. Kituo cha Sheria proposed inserting a new definition of 'qualified mental health practitioner' to ensure certainty in the implementation of the new mental health provisions introduced in the Bill.

Committee Observation

21. The Committee observed that the term "correctional facility" and "officer in charge of a correctional facility" have not been substantially used in the Code nor the Bill.
- 22.
23. The Committee further observed that the use of the term of "computer" in the proposed amendment to section 197 is neither technical nor ambiguous that relying on its ordinary meaning would create uncertainty in the interpretation of the provision.

Clause 5

24. Kituo cha Sheria submitted that the deletion of the previous sentencing provisions in the section be accompanied by a clarifying provision identifying the applicable source of sentencing jurisdiction.

Committee Observation

25. The Committee observed that the proposal intends to align the section with the current structure of subordinate courts and the sentencing jurisdiction of the subordinate courts.

Clause 7

26. Kituo cha Sheria submitted that the proposed operational period could be inadequate in certain cases and thus proposed the introduction of a minimum period to preserve the rehabilitative and deterrent objectives of suspended sentences.

Committee Observation

27. The Committee observed that the operational period during the suspension of a sentence is the period during which a suspended sentence remains available to be activated. Therefore, the operational period may be limited to the term of the sentence imposed since a longer operational period than a sentence imposed may make the suspension more burdensome than the original sentence.

Clause 8

28. The State Department for Correctional Services proposed amending the new section 27A to provide that, where exceptional operational, safety or security circumstances make the proposed mode of search of an intersex person impracticable, the reasons should be recorded in writing. This would safeguard the dignity of intersex persons whilst accommodating legitimate operational requirements and promoting transparency, accountability and oversight in the conduct of searches.
29. The State Department for Internal security and National Administration proposed an amendment to provide that where an intersex person refuses to be searched or declines to identify their sex for the purposes of conducting a search, a police officer of the rank of Inspector or above should determine the sex of the person for purposes of the search. The State Department further proposed that, where the intersex person is dissatisfied with the determination made by the police officer, the matter should be referred to a magistrate with the requisite jurisdiction for determination.
30. NIS proposed expanding the new section 27A to provide how an intersex person's preference is to be ascertained and recorded before the search. This would ensure that an intersex person's constitutional right to dignity is practically protected thereby giving full effect to the proposed amendment.
31. KNCHR proposed adding safeguards to provide that searches should not be conducted for the sole purpose of determining the sex of an intersex person and that highly intrusive searches such as the removal of clothing are carried out only by qualified medical practitioners and that all searches be conducted in privacy. This is in accordance with best international standards in the Yogyakarta Principles and the Mandela Rules.
32. Similarly, Kituo cha Sheria proposed adding safeguards to enhance accountability and the practical implementation of the provision.
33. FIDA-K proposed amending the proposal to ensure mandatory compliance to decency and human dignity in conducting a search of an intersex person in line with Article 28 of the Constitution and to prevent potential sexual harassment, abuse of power and systemic trauma inflicted on intersex persons.

Committee Observation

34. The Committee observed that in criminal justice, a right-based approach is important when searching an intersex person to protect and respect the dignity and privacy of the person. As provided in the proposed amendment, the search shall be conducted taking into account the practical considerations such as time, safety and availability of the person preferred by the intersex to conduct the search.

Clause 10-29

35. Whilst supporting the proposed repeal of sections 43 to 61A, KNCHR proposed that any future preventive measures under the Criminal Procedure Code be designed strictly within constitutional limits of necessity, proportionality, presumption of innocence and due process in line with a Human Rights-Based Approach and Kenya's obligations to respect, protect and fulfil human rights.

36. Kituo cha Sheria proposed introducing a transitional provision to provide for the discharge of persons affected by the repealed provisions and judicial review of all pending matters to facilitate the implementation of the new legal framework.

Committee Observation

37. The Committee observed that the clauses propose the deletion of provisions that deal with security for keeping peace and good behaviour since these provisions offend the principle that a person is presumed to be innocent until proven guilty. According to section 58, a person who fails to give security as ordered by the court is committed to prison. Therefore, there may be need to make provisions to expressly deal with persons who might be in custody for failure to give security.

Clause 32

38. WPA proposed amending the provision to align with the Witness Protection Act on prohibited publications relating to witness protection. Furthermore, the Agency proposed inserting a new section 77A on referral of threatened witnesses to align criminal procedure with the Witness Protection Act and to promote early identification and referral of threatened witnesses. In the Agency's view, this would reduce witness intimidation, withdrawal and attrition.

Committee Observation

39. The Committee observed that Clause 32 seeks to amend section 77(2) of the Code to provide that the proceedings in the trial of any case under the Sexual Offences Act shall be held in private and that no person shall publish any particulars leading to the identification of the victim. With respect to protection of witnesses, the Witness Protection Agency has the discretion to make a request to the court to implement protection measures during court proceedings including holding *in camera* or closed sessions.

Clause 33

40. The State Department for Internal Security and National Administration proposed an amendment to prohibit the transfer of cases by magistrates where judgment is pending, except where there is proper cause for the transfer. This is because litigation is expensive and time consuming and judicial time should be utilized optimally.
41. FIDA-K proposed amending the proposal to introduce conditions governing the transfer of cases between magistrates in matters involving children and cases of sexual and domestic violence. In particular, FIDA-K proposed that courts be required to hear the complainant and provide written reasons confirming that the transfer is necessary and would not cause secondary trauma or prohibitive costs to the victim.

Committee Observation

42. The Committee observed that to ensure fair, efficient and effective administration of justice, a provision empowering the transfer of case from one magistrate to another may be necessary. However, a magistrate should not have unfettered power to transfer a case to another magistrate particularly where the transfer could affect the accused rights.

Clause 35

43. Whilst supporting the proposal, KNCHR recommended that prosecutors and courts apply *nolle prosequi* in strict conformity with Articles 157(8) and 157(11) of the Constitution including providing written reasons demonstrating that discontinuance is in the public interest, promotes the administration of justice and does not amount to an abuse of legal process.
44. Kituo cha Sheria proposed specifying factors that the court should consider when determining whether to grant permission to enter a *nolle prosequi*.
45. FIDA-K proposed amending the proposal to require courts, in serious offences such as SGBV and domestic violence, to only grant permissions for a *nolle prosequi* where it is satisfied that the victim has fully been informed and their views considered and placed on record. This is in line with survivor-centredness and Kenya's state obligation under international instruments such as the Maputo Protocol.

Committee Observation

46. The Committee observed that under Article 157 of the Constitution, the DPP has power to institute and undertake criminal proceedings and to discontinue proceedings before a judgment is passed. However, the power to discontinue any prosecution is subject to permission being given by the court and having regard to the public interest, the interests of the administration of justice and the need to prevent the abuse of legal processes.

Clause 40

47. NCCS proposed inserting a new sub-section (6) to require that a search involving a child is conducted in a manner that upholds the dignity and privacy of the child in accordance with Article 53 of the Constitution and in the presence of an appropriate adult in line with section 220 of the Children Act, Cap 141.

Committee Observation

48. The Committee observed that sections 220 and 253 of the Children Act sufficiently guarantees the right of a child in conflict with the law including the mode of carrying out a search on a child.

Clause 42

49. FIDA-K proposed amending the proposal to directly address structural discrimination against women's land and property rights in fulfilment of the State's mandate under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Maputo Protocol.

Committee Observation

50. The Committee observed that the section deals with forfeiture of recognizance and the amendment seeks to allow for sale of both moveable and immoveable property belonging to a person bound by the recognizance which has been forfeited and the penalty ordered by the court is not paid. Therefore, addressing the structural discrimination against women's land and property may be covered sufficiently in statutes that promote and protect the right to property.

Clause 49

51. The State Department for Correctional Services proposed inserting new subsections to enhance operational efficiency, protect constitutional rights and enhance coordination between the Judiciary, the National Police Service, mental health facilities and the Kenya Prisons Service.
52. The State Department for Internal Security and National Administration proposed an amendment to provide for appeal against a finding on the fitness of an accused person to stand trial on account of mental illness. Furthermore, the State Department proposed allowing the family of an accused person the opportunity to avail their own medical doctor to determine the issue of fitness to stand trial. This would promote fairness and confidence in the administration of justice.
53. NIS noted that the prohibition of a report of the evidence or court decisions regarding a person found unfit to stand trial until conclusion of the trial may contravene Articles 33 and 34 of the Constitution on the freedom of expression and freedom of the media. While protecting the privacy and mental health status of an accused person is legitimate under Article 31, a criminal penalty that lacks an exception for open-court judicial reporting where the identity of the vulnerable person is merely redacted may offend the Constitution. Hence, NIS proposed introducing exceptions for open court judicial reporting that redacts the identity of the vulnerable individual.
54. ODPP proposed maintaining section 162(1), (2) and (3) as currently exists in the Criminal Procedure Code, Cap. 75 because they already adequately address legal issues of suspects with mental illness. ODPP also proposed deleting section 162(4) and (5) as the provisions were declared unconstitutional in *Kimaru and 17 Others v Attorney General and Another*.
55. In addition, ODPP proposed deleting the proposed section 162(7) because, as drafted, it would be unconstitutional in so far as the trial proceeds with an accused person who does not comprehend the proceedings. ODPP further proposed deleting the proposed section 162(10) on the premise that the Criminal Procedure Code, Cap. 75 being a procedural statute cannot prescribe offences.
56. KNCHR proposed the inclusion of a new provision to require the court to adopt the minimum necessary restrictions compatible with the safety and health of an accused person in accordance with the Mental Health Act, Cap. 248 where an accused person is found unfit to stand trial under section 162.
57. Similarly, Kituo cha Sheria proposed including additional safeguards to ensure periodic judicial review, protection against indefinite detention and enhanced procedural fairness.

Committee Observation

58. The Committee observed that the detaining of persons facing criminal trials or having been tried and special findings made that they were 'guilty but insane' in prisons at the president's pleasure pursuant to sections 162 (4) and (5), 166 (2), (3), (4), (5), (6) and (7) and 167 (1) (a), (b), (2), (3) and (4) of the Criminal Procedure Code or under any other law constituted a threat to the doctrine of separation of powers and the independence of the Judiciary. An accused who was found to be unfit to stand trial or to continue participating in a criminal trial due to mental challenges or an accused who was tried and convicted of a criminal offence,

but was found insane at the time of committing the crime was a person with disability and ought to be accorded the necessary protection and assistance required under the Constitution and the law.

Clauses 49 and 50

59. NCCS proposed a new provision on the factors to consider where a question of fitness to stand trial involves a child in line with sections 227 and 228 of the Children Act, Cap. 141.
60. FIDA-K proposed amending the proposals to introduce a timeframe of six months within which an order for institutionalization should be subject to automatic judicial review and that the court should order that the medical assessment be gender responsive and trauma-informed, taking into account the full consideration any history of domestic violence, abuse or psychosocial factors affecting the accused person.

Committee Observation

61. The Committee observed that the amendment seeks to align the provision on the defence of mental incapacity with the doctrine of separation of powers and the independence of the Judiciary as well as accord the accused person who was suffering from mental illness at the time of commission of the offence with necessary protection and assistance required under the Constitution and the law.

Clause 50

62. The State Department for Correctional Services proposed amendments to specify the factors that the court should consider when determining the appropriate placement of an accused person, to require the medical officer in charge of a mental health facility to submit periodic reports every six months on the patient's condition and suitability for continued treatment or discharge and require the court to notify the Kenya Prisons Service immediately where an order affects a person already committed to prison custody. This would enhance judicial oversight, protect constitutional rights and facilitate efficient correctional administration.
63. ODPP proposed amending the proposal to cure the issue of disposal of accused persons adjudged guilty but insane who cannot continue being imprisoned in the mental hospital forensic wings. Furthermore, amend the proposal to provide for outpatient services where the family of an accused person adjudged guilty but insane is willing to take them.
64. ODPP added that the proposal be amended to introduce the term 'State patient' as a legal and medical term for a person restricted in a secure psychiatric facility by a court order because they have a mental illness and cannot stand trial or were not found criminally liable for an offence.
65. Kituo cha Sheria proposed amending the clause to expressly recognize the principle that detention in a mental health facility should continue for as long as it remains medically necessary.

Committee Observation

66. The Committee observed that the provision accords the accused person who was suffering from mental illness at the time of commission of the offence with necessary protection and assistance required under the Constitution and the law. The committal is also subject to

section 20A and 21 of the Mental Health Act which provides for the review of mental health status of a person and discharge of a person with mental illness who has recovered.

Clauses 50 and 51

67. **KNCHR** proposed an amendment to include an explicit proviso to section 166(5) that such committal be exclusive to a designated mental health facility and should operate under the safeguards of the Mental Health Act, Cap. 248. This would prevent persons found not guilty by reason of mental illness from being committed to ordinary persons, help ensure they received appropriate treatment and provide a clear statutory anchor.

Committee Observation

68. The Committee observed that the committal of an accused person, who was suffering from mental illness at the time of commission of the offence, to a mental health facility for treatment offers necessary assistance required.

Clause 52

69. The State Department for Internal Security and National Administration proposed that costs should not be awarded in criminal proceedings. Instead, any claim for costs should be determined through civil proceedings arising out of the criminal matter. This is because assessing costs at the criminal stage does not afford the accused the opportunity to challenge them at an appellate court.
70. ODPP noted that criminal proceedings under the Kenya's current constitutional dispensation are instituted by way of filing a charge sheet before court hence, proposed amending sub-clause (1) to align it with the Constitution.
71. ODPP also proposed amending sub-clause (2) to enhance the costs from Ksh. 20,000 to Ksh. 50,000 and from Ksh. 10,000 to Ksh. 20,000 respectively to factor in the expenses incurred by the accused person in attending to the prosecution and the cost of inflation.
72. Kituo cha Sheria proposed making the statutory caps discretionary to preserve judicial independence and to ensure that awards adequately compensate accused persons in deserving cases.

Committee Observation

73. The Committee observed that the power of a court to order payment of costs to an accused or private prosecutor seeks to compensate for reasonable expenses in defending or prosecuting the criminal proceedings.

Clause 53

74. The State Department for Correctional Services proposed further amendment to section 197 to respond to the adoption of electronic case management systems within the criminal justice system. Express statutory recognition of secure electronic transmission would reduce delays in admission and release of prisoners, minimize the risk of forged warrants, improve inter-agency coordination and enhance efficiency in sentence administration.

Committee Observation

75. The Committee observed that section 197 outlines the manner in which evidence is recorded before a magistrate and the amendment seeks to align this requirement with the technological

advancement. On electronic case management within the criminal justice system, this has been adopted through the Practice Directions on Electronic Case Management issued by the Chief Justice in exercise of the powers conferred under Article 159(2) and 161(2)(a) of the Constitution.

Clause 54

76. KNCHR proposed the introduction of a new provision to include a general obligation that courts should ensure the provision of competent interpretation and necessary procedural accommodations so that accused persons, victims and witnesses, including persons with disabilities and those who do not understand Kiswahili or English can effectively follow and participate in proceedings.
77. Kituo cha Sheria proposed amending the provision to expressly preserve the right to interpretation where necessary.

Committee Observation

78. The Committee observed that Article 50(3) places an obligation on the State through the courts to ensure that the information given to an accused person is in a language that the accused person understands.

Clause 58

79. The State Department for Internal Security and National Administration proposed deletion of the provision to the extent that it could inflict more severe punishment on children contrary to the Children Act, Cap. 141 which promotes the best interests of children.
80. Kituo cha Sheria proposed that committal decisions be accompanied by written reasons to promote transparency and facilitate review.

Committee Observation

81. The Committee observed that there may be need to re-look at the provisions on section 221 of the Criminal Procedure Code that refers to the procedure of a court, having convicted a person, commits the person to a higher court for the purpose of sentencing. This is because the current classification of our magistrates court does not create different sentencing jurisdictions for each rank of magistrates courts.

Clause 61

82. Kituo cha Sheria proposed using terminology that reflects the rights-based language adopted throughout the Bill.

Committee Observation

83. The Committee observed that there is need to re-draft the provision to adopt the human-rights friendly language with respect to an accused person being treated as a person of unsound mind for refusing to plead.

Clause 75

84. ODPP proposed amending sub-clause (2) to remove the words 'presiding' and 'head of station' because in practice, any magistrate can refer a matter to the High Court for revision.

Committee Observation

85. The Committee observed that section 5 of the Magistrates' Courts Act provides that a magistrates' court constitutes a chief magistrate, senior principal magistrate, principal magistrate, senior resident magistrate and resident magistrate. Therefore, the head of station, who often is the chief magistrate, may be given supervisory powers over the magistrates courts within the station.

Clause 80

86. The State Department for Internal Security and National Administration submitted that the legal regime for handling forfeited goods is multifaceted and thus the proposal should be expanded to include more statutes such as the Ethics and Anti-Corruption Act, Cap. 7H and Proceeds of Crime and Anti-Money Laundering Act, Cap. 59A.
87. NIS noted that the blanket provision on the release of all exhibits to proprietors potentially creates a legal mandate to return illicit substances, prohibited firearms and counterfeit currency contrary to the State's protective mandate. Thus, NIS proposed amending the clause to explicitly carve out exceptions for illicit, hazardous, perishable or contraband items because such exhibits should be destroyed or disposed of in accordance with specific existing statutory frameworks rather than returned to proprietors.
88. ODPP proposed amending section 389A of the Criminal Procedure Code, Cap. 75 to replace the term 'Chief Registrar' with 'State' because exhibits are forfeited to the State and not the Judiciary. Furthermore, disposal of exhibits by judicial officers may create a conflict of interest where the Judiciary has adjudicated a matter and given an order of forfeiture. ODPP added that a separation of functions is necessary for objectivity to be maintained and that various statutes vest powers of disposal of forfeited exhibits to different agencies.
89. ODPP proposed deleting or amending the proviso to the new section 389C because, as drafted, it is likely to be abused and could interfere with the trial and administration of justice in serious cases when exhibits are released before being produced.

Committee Observation

90. The Committee observed that where the exhibits consists of illegal goods, the law should generally not permit their release to the accused person merely because the goods are no longer required as evidence. The proviso in the proposed new section 389C gives the court discretion to determine if the goods are to be released or not.

Clause 83

91. The State Department for Correctional Services proposed expanding the membership of the Criminal Procedure Rules Committee to include the Commissioner General of Prisons or a designated representative because the Kenya Prisons Service is a principal criminal justice institution responsible for implementing court orders to provide expertise necessary for developing practical procedural rules. The State Department further proposed empowering the Committee to prescribe standard forms including warrants of commitment, release warrants and sentence computation forms, to promote uniformity, reduce errors in sentence administration, facilitate interoperability among criminal justice agencies and improve efficiency of prison operations.

92. NIS noted the need to specify the scope, functions and powers of the Rules Committee. Additionally, NIS proposed amending the Bill or introducing a clause in the Bill to denote to the Chief Justice the power to provide for the Rules Committee's procedure including the meetings, funds and tenure of Committee members.
93. ODPP proposed the deletion of the proposed section 395(2) of the Criminal Procedure Code, Cap. 75.
94. Noting that the Agency is a member of the NCAJ and closely collaborates and coordinates with the proposed membership of the Criminal Procedure Rules Committee in the administration of justice, WPA proposed including representation from the Agency in the Committee to advance the law reform agenda to ensure measures and strategies on the covert operations and activities of the Agency are upheld throughout including the investigative stage, trial stage and post-testimony stages.
95. Noting their importance and relevance to the development, review and implementation of laws and procedures governing the administration of criminal justice, KLRC proposed amending the membership of the Criminal Procedure Rules Committee to include representatives of the Kenya Law Reform Commission and of the National Legal Aid Service. This would strengthen the technical and institutional composition of the Criminal Procedure Rules Committee, broaden the expertise available to it, and enhance the quality, inclusiveness and practical effectiveness of the Rules to be developed.
96. FIDA-K proposed expanding the membership of the Criminal Procedure Rules Committee to include women's rights organizations, psychologists and disability organizations in line with Article 27 of the Constitution which mandates the State to address historical marginalization and discrimination.

Committee Observation

97. The Committee observed that a criminal procedure rules committee would provide a structured mechanism for developing and reviewing rules that facilitate the effective implementation of criminal procedure. The membership of such a committee should strive to accommodate all actors in the criminal justice sector.

3.2.3 Submissions on New Proposals

Section 2

98. ODPP proposed amending the definition of 'prosecutor' to align with the definition contained in the ODPP Act, Cap. 6B.

Committee Observation

99. The Committee observed that there may need to align the definition of "prosecutor" with the Office of Director of Public Prosecutions Act.

Section 123A

100. WPA proposed amending section 123A(I) to align with the Bail and Bond Policy, 2015 and provide for exceptions to the right to bail and bond by expressly incorporating witness safety into bail considerations. This would be in line with judicial decisions where courts have denied and or cancelled bail and bond to accused persons based on the interference, threats and

intimidations to protected witnesses and their related persons as was in held in ***Republic v Nyamai and 11 Others (Criminal Case No. 25 of 2020) [2022] KEHC 10376 (KLR)***.

Committee Observation

101. The Committee observed that the WPA has the discretion to request the Court to implement protection measures during bail and bond hearings.

Section 137O

102. ODPP proposed replacing the 'Attorney-General' with the 'Director of Public Prosecutions' because only the DPP, not the AG, has the mandate to operationalize the provisions under Part IV of the Criminal Procedure Code, Cap 75 relating to criminal investigations place of trial.

Committee Observation

103. The Committee observed that section 137O provides that the Attorney-General may make rules for the provisions on plea agreement which shall apply with modifications to prosecutions. Therefore, the appropriate authority to make these rules should be given to the DPP.

Section 163

104. In line with the proposed amendments to section 162, ODPP proposed amending section 163 of the CPC, Cap 75 to retain the DPP's powers on decision regarding whether proceedings against someone continue or otherwise in accordance with Article 157 of the Constitution.

Committee Observation

105. The Committee observed that the Bill does not contain affect the powers of the DPP under section 163.

Section 206

106. ODPP proposed amending section 206(1) to align with Article 50(2)(f) of the Constitution to allow the prosecution and court to proceed in absentia due to deliberate absence by an accused person. This balances the rights of the victim to have a fair hearing as well.

Committee Observation

107. The Committee observed that under Article 50(2)(f) of the Constitution, an accused person has the right to be present when being tried, unless the conduct of the accused makes it impossible for the trial to proceed. The provision allows the proceedings to continue on the absence of an accused person unless the accused person is charged with a felony.

Section 394

108. ODPP proposed substituting 'Minister' with Judiciary and ODPP' in section 394 of the Criminal Procedure Code, Cap. 75. In ODPP's view, the mandate to make rules regarding criminal procedure are that of the Judiciary and DPP.

Committee Observation

109. The Committee observed that section 394 provides for the payment of reasonable expenses of a complainant or witness attending court for the purposes of an inquiry, trial or other proceedings subject to rules made by the Minister. The existing Criminal Procedure (Remuneration of Witnesses and Assessors) Rules were made under this provision. Given that the Code does not define the term "Minister" and the fact that the justification of the payment of expenses incurred by a complainant or witness is to promote access to justice, the proposed Criminal Procedure Rules Committee may be bestowed with this power.

General proposals

110. NCCS proposed amending the proposal to expressly provide that matters relating to children be handled by the specialized Children's Court in line with the Children Act, Cap. 141.

Committee Observation

111. The Committee observed that section 8 of the Children Act, Cap. 141 sufficiently guarantees the best interests of the child by requiring all judicial and administrative institutions to treat the interests of the child as the first and paramount consideration when exercising any powers conferred to them under any written law to the extent consistent with adopting a course of action that safeguards and promotes the rights and welfare of the child.
112. The Judiciary proposed establishing a Sentencing Council to promote greater awareness and consistency in sentencing and bail/bond decisions whilst safeguarding judicial independence. This would also address sentencing disparities across courts, an issue that persists in Kenya despite the 2015 Sentencing Policy.
113. Katiba Institute and Reprieve UK submitted that the absence of explicit legislative provisions on sentencing undermines legal certainty and consistency. Hence, proposed codifying resentencing procedures to harmonize judicial practice, provide clarity, enhance efficiency, and ensure compliance with constitutional and human rights standards. This would also strengthen the legitimacy, operationalization and enforceability of the Sentencing Policy Guidelines, 2023.

Committee Observation

114. The Committee observed that the Constitution vests judicial authority in courts and tribunals which involves the power to hear and determine disputes and impose lawful sentences. Sentencing is an integral component of the criminal justice process which is tasked to a trial judge or magistrate to impose. Pursuant to section 35 of the Judicial Service Act, the National Council on Administration of Justice is the entity that is responsible for formulating policies relating to the administration of justice which may include guidelines to standardise the sentencing processes and procedures.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

115. Upon reviewing the Bill and the submissions received, the Committee made the following observations:

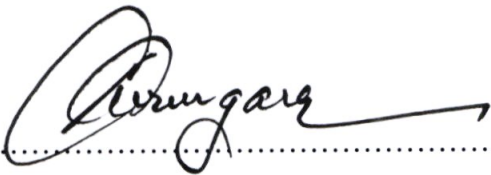
- 1) the Bill is a culmination of proposals developed over years of consultation among state and non-state agencies in the criminal justice system under the stewardship of the National Council on the Administration of Justice. The Bill therefore seeks to align the criminal procedure with the Constitution and subsequent statutory reforms and developments in the administration of justice.

116. In light of the foregoing, the Committee resolved to recommend to the House to approve the Bill with amendments.

CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

117. The Committee, having considered the Criminal Procedure Code (Amendment) Bill (*National Assembly Bill No. 11 of 2026*) and the submissions from members of the public and stakeholders, recommends that the House **approves the Bill** with the amendments contained in the Schedule of Amendments forming Chapter Six of this Report.

SIGNED.......... DATE..... 25.8.2026

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRMAN
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 25 AUG 2026	
DAY: TUE	
TABLED BY:	HON. GEORGE MURUGARA, MP
CLERK-AT-THE-TABLE:	CHAIRPERSON
	V. WAMBUI

CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

118. In view of the observations made, the Committee proposed the following amendments to the Bill:

CLAUSE 2

THAT Clause 2 of the Bill be amended in paragraph (c) by inserting the following new definitions—

“mental health facility” has the meaning assigned to it under section 2 of the Mental Health Act;

“mental health practitioner” has the meaning assigned to it under section 2 of the Mental Health Act;

Justification: To words are central to the operation of the proposed new sections 162 and 166 on fitness to stand trial and special finding of not guilty.

CLAUSE 49

THAT Clause 49 of the Bill be amended by deleting subclause (7) in the proposed new section 162.

Justification: It would be unconstitutional for a trial to proceed with an accused person who does not comprehend the proceedings.

CLAUSE 52

THAT Clause 52 of the Bill be amended in paragraph (b) by deleting the proposed new subsection (2) and substituting therefor the following new subsection—

(2) A judge of the High Court or a magistrate who acquits or discharges a person accused of an offence may, if the prosecution for the offence was originally instituted by a private prosecutor, order the private prosecutor to pay to the accused person such reasonable costs as the judge or magistrate may deem fit:

Provided that—

- (a) the costs shall not exceed fifty thousand shillings in the High Court or twenty thousand shillings in the case of an acquittal or discharge by a magistrates’ court; and
- (b) no such order shall be made if the judge or magistrate considers that the private prosecutor had reasonable grounds for making his or her complaint.

Justification: To align it with the provision on institution of prosecution with the Constitution and to factor in the expenses incurred by the accused person in attending to the prosecution and the cost of inflation.

CLAUSE 58

THAT the Bill be amended by deleting Clause 58 and substituting therefor the following new Clause—

58. The principal Act is amended by repealing section 221.

Justification: The current classification of our magistrates' court does not create different sentencing jurisdictions for each rank of magistrates' courts.

CLAUSE 75

THAT the Bill be amended by deleting Clause 75 and substituting therefor the following new Clause—

Repeal and
replacement of
section 363 of Cap. 75.

75. The principal Act be amended by deleting section 363 and substituting therefor the following new section—

Examination of records of
magistrates' courts by head
of station.

363. (1) The head of station of a magistrates' court may call for and examine the record of any criminal proceedings of a magistrate court for the purpose of satisfying themselves as to the legality, correctness or propriety of any finding, sentence or order recorded or passed and as to the regularity of the proceedings.

(2) If the head of court station acting under subsection (1) considers that a finding, sentence or order of the magistrates' court is illegal or improper or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court.

Justification: This amendment seeks to insert the missing proposed new subsection (1) and clarify the power of examination of records of magistrates' courts.

CLAUSE 80

THAT Clause 80 of the Bill be amended in the proposed new section 389B by deleting the words "Chief Registrar" and substituting therefor the word "State".

Justification: Various statutes vest powers of disposal of forfeited exhibits to different agencies.

CLAUSE 82

THAT Clause 82 of the Bill be amended by the words "Cabinet Secretary" and substituting therefor the words "Criminal Procedure Rules Committee".

Justification: Given that the Code does not define the term "Cabinet Secretary" and that the justification of the payment of expenses incurred by a complainant or witness is to promote access to justice, the proposed Criminal Procedure Rules Committee may be bestowed with the power of making the rules on payment of the expenses.

NEW CLAUSES

THAT the Bill be amended by inserting the following new Clause immediately after Clause 43—

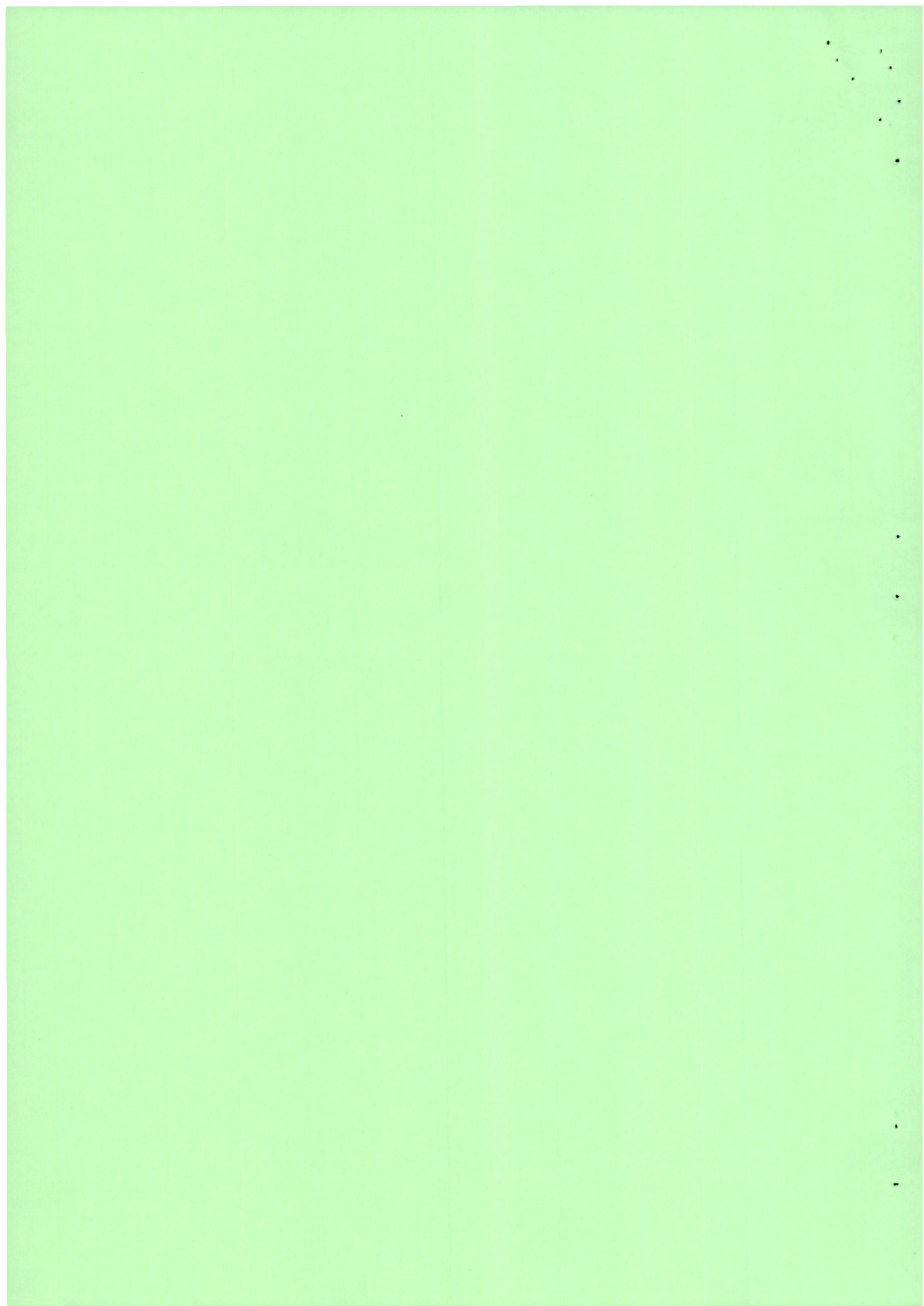
Amendment of
section 137O of Cap.
75.

43A. Section 137O of the principal Act is amended by deleting the words “Attorney-General” and substituting therefor the following words “Director of Public Prosecution”.

Justification: The section provides that the Attorney-General may make rules for the provisions on plea agreement which shall apply with modifications to prosecutions. Therefore, the appropriate authority to make these rules should be given to the DPP.

Annexure **1**

Adoption Schedule





DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ADOPTION OF THE COMMITTEE REPORT ON ITS CONSIDERATION OF THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 11 OF 2026)

We, the Members of the Departmental Committee on Justice and Legal Affairs have, pursuant to Standing Order 199, adopted this Report of the Committee on its Consideration of the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026) Sponsored by the Hon. George Gitonga Murugara, CBS, MP and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson

2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chair

3. Hon. Gladys Boss, MGH, MP

.....

4. Hon. Farah Maalim, EGH, MP

.....

5. Hon. Silvanus Osoro Onyiego, CBS, MP

6. Hon. Tom Joseph Francis Kajwang', CBS, MP

.....

7. Hon. Timothy Wanyonyi Wetangula, CBS, MP

8. Hon. (Dr.) Otiende Amollo, SC, EBS, MP

.....

9. Hon. Michael Mwangi Muchira, MP

.....

10. Hon. Aden Daud, EBS, MP

11. Hon. John Okwisia Makali, MP

12. Hon. Stephen M. Mogaka, MP

.....

13. Hon. Timothy Kipchumba Toroitich, MP

14. Hon. Harold Kimuge Kipchumba, MP

15. Hon. CPA Suleka Hulbale Harun, MP

.....

Annexure **2**

Minutes



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FIFTH SESSION-2026
DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS, HELD AT THE COMMITTEE ROOM 21,
FIFTH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS ON
THURSDAY, 20TH AUGUST 2026 AT 10:00 A.M.**

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chairperson
3. Hon. Francis Kajwang' Tom Joseph, CBS, MP
4. Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP
5. Hon. Aden Daud, EBS, MP
6. Hon. Muchira Michael Mwangi, MP - *virtually*
7. Hon. Makali John Okwisia, MP - *virtually*
8. Hon. Toroitich Timothy Kipchumba, MP
9. Hon. Harold Kimuge, MP

ABSENT WITH APOLOGIES

1. Hon. Gladys Boss, MGH, MP
2. Hon. Maalim Farah, EGH, MP
3. Hon. Onyiego Silvanus Osoro, CBS, MP
4. Hon. Timothy Wanyonyi Wetangula, MP
5. Hon. Mogaka Stephen M. MP
6. Hon. CPA Sulekha Hulbale Harun, MP

SECRETARIAT

1. Mr. Ahmed Salim - Clerk Assistant I/ Head of the Secretariat
2. Mr. Abdirahim Omar - Fiscal Analyst I
3. Mr. Samuel Wanjiru - Clerk Assistant III
4. Mr. Abdikafar Abdi - Clerk Assistant III
5. Mr. Isaac Nabiswa - Legal Counsel I
6. Ms. Esther Mbatha - Public Communication Assistant

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Consideration and adoption of the draft report on the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026) by the Hon. George Gitonga Murugara, CBS, MP
5. Consideration and adoption of the draft report on the Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026) by the Hon. George Gitonga Murugara, CBS, MP
6. Any Other Business
7. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/222/2026:**PRELIMINARIES**

The Meeting was called to order at thirteen minutes past ten o'clock with a Prayer by the Chairperson. The agenda of the Sitting was adopted, having been proposed by Hon. Harold Kimuge, MP and seconded by Hon. Francis Kajwang' Tom Joseph, CBS, MP.

MIN. NO. DDC/JLAC/223/2026:**CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Minutes of the 47th Sitting held on 13th August 2026 were adopted as a true reflection of the proceedings, having been proposed by Hon. Toroitich Timothy Kipchumba, MP and seconded by Hon. Muchira Michael Mwangi, MP.

Minutes of the 48th Sitting held on 18th August 2026 were adopted as a true reflection of the proceedings, having been proposed by Hon. Harold Kimuge, MP and seconded by Hon. Francis Kajwang' Tom Joseph, CBS, MP.

MIN. NO. DDC/JLAC/224/2026:**CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 11 OF 2026) BY THE HON. GEORGE GITONGA MURUGARA, CBS, MP**

The Committee, having considered the draft report on the Bill, observed that the Bill was a culmination of proposals developed over years of consultation among state and non-state agencies in the criminal justice system under the stewardship of the National Council on the Administration of Justice (NCAJ).

The Bill sought to align the criminal procedure with the Constitution and subsequent statutory reforms and developments in the administration of justice.

The Committee, having considered the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026) and the submissions from members of the public and stakeholders, resolved to recommend that the House approves the Bill with the amendments contained in the Schedule of Amendments forming Chapter Six of the Report on the Bill.

Adoption of the Report

The Report on the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026) was adopted, having been proposed by Hon. Francis Kajwang' Tom Joseph, CBS, MP and seconded by Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP.

MIN. NO. DDC/JLAC/225/2026:**CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE PENAL CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2026) BY THE HON. GEORGE GITONGA MURUGARA, CBS, MP**

The Committee, having considered the draft report on the Bill, observed that the comprehensive amendments proposed to the Penal Code are informed by the need to align the penal law with the provisions of the Constitution and ensure provisions remain relevant and effective in addressing the evolving Kenyan society.

The Committee noted that the amendments proposed to the Penal Code seek to:

- i. remove the subjection of children sentenced in lieu of death penalty from detention at the President's pleasure;

- ii. shift the burden of proof for the offences of incitement to violence and disobedience from an accused person to the prosecution;
- iii. repeal offences which are civil in nature and offences that are sufficiently provided for under other statutes;
- iv. repeal detention under the Detention Camps Act as a mode of punishment;
- v. amend provisions relating to the mandatory death penalty in compliance with decisions of the Court; and
- vi. address the ambiguity in the offences of simple robbery and robbery with violence.

The Committee, having considered the Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026) and the submissions from members of the public and stakeholders, resolved to recommend that the House approves the Bill with the amendments contained in the Schedule of Amendments forming Chapter Six of the Report on the Bill.

Adoption of the Report

The Report on the Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026) was adopted, having been proposed by Hon. Mutuse Eckomas Mwengi, OGW, MP and seconded by Hon. Harold Kimuge, MP.

MIN. NO. DDC/JLAC/226/2026: ANY OTHER BUSINESS

The Members noted the following business ~~before~~ the Committee:

i. The County Boundaries Bill (Senate Bill No. 6 of 2023) by Sen. Moses Kajwang', MP.
The Committee, through the Chairman, having suspended consideration of the Bill on the advice of the Attorney General, resolved to inform the Honourable Speaker on the same.

ii. The Sexual Offences (Amendment) Bill (National Assembly Bill No. 50 of 2025) by Hon. Amina Udgoon Siyad Kuno, MP.
The Committee proposed to conduct stakeholder engagement on the Bill upon resumption from the recess, set to commence on 28th August 2026.

iii. The Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) by Hon. Aden Daud Mohamed, EBS, MP.
The Committee is set to consider the draft report on Tuesday, 25th August 2026.

iv. The County Governments Election Laws (Amendment) Bill (Senate Bill No. 2 of 2024) by Senator Crystal Asige, M.P.
The Committee proposed to conduct stakeholder engagement on the Bill upon resumption from the recess, set to commence on 28th August 2026.

v. The Certified Governance Secretaries Bill (National Assembly Bill No. 17 of 2026) by the Leader of Majority Party.
Arising from the stakeholders engagement on the Bill on Thursday, 13th August 2026 and noting the concerns and submissions made by the State Corporations Advisory Committee on whether the institute should be a State Corporation, and whether bestowing the institute with both the regulatory responsibilities and those on membership welfare could create conflict, the Committee advised the National Treasury, Institute of Certified Secretaries and State Corporations Advisory Committee to have a joint sitting and submit a joint memorandum within one week that consolidates all the proposed amendments.

vi. The Trust Administration Bill (National Assembly Bill No. 29 of 2026) by the Leader of Majority Party.
Committee met with the stakeholders on 6th August 2026 and 18th August 2026 and resolved to reconvene on 25th August 2026 to consider harmonised submissions from the Kenya Revenue Authority, Kenya Law Reform Commission, Central Bank of Kenya (CBK) and the Institute of Certified Public Accountants of Kenya (ICPAK).

- vii. The Constitution of Kenya (Amendment) (No.2) Bill, 2025 (National Assembly Bill No. 29 of 2025) by Hon. Gladys Boss, MP, the Hon. Beatrice Elachi, MP and the Hon. Jane Kagiri MP.

Advert calling for the public to submit views on the Bill published on 4th August 2026, deadline being 2nd November 2026.

- viii. Statutory Instruments (Amendment) Bill (Senate Bill No. 10 of 2024) is a Bill sponsored by the Senate Majority Leader and Senate Minority Leader.

Advert calling for the public to submit views on the Bill published on 18th August 2026.

- ix. Mediation on Election Offences (Amendments) (No. 2) Bill (Senate Bill No.28 of 2024. Mediation Committee to schedule a meeting upon resumption from the recess, set to commence on 28th August 2026.

- x. Sessional Paper No. 3 of 2023 on the Kenya Policy on Public Participation from Office of the Attorney-General and Department of Justice.

Committee to schedule a meeting upon resumption from the recess, set to commence on 28th August 2026, to consider the draft report.

- xi. Sessional Paper No. 3 of 2024 on the Power of Mercy Policy from Office of the Attorney-General and Department of Justice

The Committee to schedule a meeting upon resumption from the recess, set to commence on 28th August 2026, to consider the draft report.

- xii. Sessional Paper No. 4 of 2024 on Alternative Dispute Resolution Policy from Office of the Attorney-General and Department of Justice

The Committee proposed to meet the Office of the Attorney General on the same during the proposed retreat on Budget Implementation indicated below.

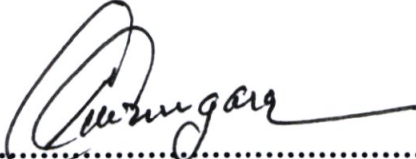
- xiii. Monitoring of Budget Implementation by Ministries, Departments and Agencies under the purview of the Committee for the Financial Year 2025/2026

The Committee proposed to organise a retreat with the Ministries, Departments and Agencies during the week commencing on 5th October 2026, in Mombasa County. The Committee to seek permission from the Honourable Speaker to proceed with the working retreat (S.O 186(2)).

MIN. NO. DDC/JLAC/227/2026:

ADJOURNMENT

The meeting was adjourned at eleven minutes to eleven o'clock. Next meeting to be held on Tuesday, 25th August 2026 at 10:00 am.

SIGNED:  DATE: 25. 8. 026
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FIFTH SESSION-2026
DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 43rd SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS, HELD AT COMMITTEE ROOM 24,
BUNGE TOWER, PARLIAMENT BUILDINGS ON THURSDAY, 2ND JULY 2026
AT 10:00 A.M.**

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson
2. Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP
3. Hon. Toroitich Timothy Kipchumba, MP
4. Hon. Aden Daud, EBS, MP
5. Hon. Mogaka Stephen M. MP
6. Hon. Harold Kimuge, MP - *virtually*
7. Hon. CPA Sulekha Hulbale Harun, MP

ABSENT WITH APOLOGIES

1. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chairperson
2. Hon. Gladys Boss, MGH, MP
3. Hon. Maalim Farah, EGH, MP
4. Hon. Francis Kajwang' Tom Joseph, CBS, MP
5. Hon. Onyiego Silvanus Osoro, CBS, MP
6. Hon. Makali John Okwisia, MP
7. Hon. Muchira Michael Mwangi, MP
8. Hon. Timothy Wanyonyi Wetangula, MP

SECRETARIAT

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. Ahmed Salim | - | Clerk Assistant I/Lead Clerk |
| 2. Mr. Abdikafar Abdi | - | Clerk Assistant III |
| 3. Mr. Samuel Wanjiru | - | Clerk Assistant III |
| 4. Mr. Walala Ronald | - | Senior Legal Counsel |
| 5. Mr. Isaac Nabiswa | - | Legal Counsel II |
| 6. Ms. Vivienne Ogega | - | Research Officer III |
| 7. Ms. Valentine Too | - | Attache' |

IN-ATTENDANCE

Kenya Law Reform Commission

1. Mr. James Nombi - Ag. CEO, KLRC

Judiciary

2. Mr. Ken Ogutu - Legal Counsel, Judiciary

National Council for Children's Services

3. Mr. Abdinoor Sheikh - CEO, NCCS
4. Ms. Caroline Meres - Ass. Director, NCCS
5. Ms. Maureen Nyabate - CO, NCCS

Witness Protection Agency

- | | | |
|-------------------------|---|--------------------------------|
| 6. Dr. Zachary Mwangi | - | CPO, Witness Protection Agency |
| 7. Ms. Everlyne Arisi | - | SLO, WPA |
| 8. Ms. Shillah Nyambura | - | WPA PR |

FIDA-Kenya

- | | | |
|------------------------|---|---------------------------------|
| 9. Ms. Sophie Kaibiria | - | FIDA- Kenya, Executive Director |
| 10. Ms. Tracey Lichuma | - | FIDA- Kenya |

National Council on the Administration of Justice

- | | | |
|-----------------------|---|---------------------|
| 11. Dr. Mary Kamau | - | Head Advisory, CAJ |
| 12. Mr. Peter Thuku | - | Legal Officer, NCAJ |
| 13. Ms. Merioth Ndumu | - | NCAJ |

National Intelligence Service

- | | | |
|--------------------------|---|--------------------|
| 14. Mr. Nicholas Kitonga | - | Legal Counsel, NIS |
| 15. Ms. Carol Sigei | - | Head of Legal, NIS |
| 16. Mr. Edwin Mutai | - | Legal Counsel, NIS |

Office of the Attorney General

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| 17. Mr. Samson Maundu | - | Deputy Chief State Counsel |
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Kenya National Commission on Human Rights

- | | | |
|------------------------|---|----------------|
| 18. Mr. Joseph Ndiku | - | Ag. CEO, KNCHR |
| 19. Mr. Clement Kemboi | - | KNCHR |

Ministry of Interior & National Administration

- | | | |
|------------------------|---|-------------------------|
| 20. Mr. Kepha Onyiso | - | DCSC, Interior |
| 21. Mr. Opara Cedric | - | Legal Officer, Interior |
| 22. Mr. Gillian Syomhi | - | Attachee, Interior |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Meeting with Stakeholders to consider the following Bills:
 - (a) Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026) by Hon. George Murugara, MP
 - (b) Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026) by Hon. George Murugara, MP
5. Any Other Business
6. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/195/2026:

PRELIMINARIES

The Meeting was called to order at fifteen minutes past ten o'clock. The Chairperson said the Prayer, followed by self-introductions. The agenda of the Sitting was adopted, having been proposed by Hon. Harold Kimuge, MP and seconded by Hon. Aden Daud, MP.

MIN. NO. DDC/JLAC/196/2026:

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda was deferred.

Various stakeholders appeared before the Committee and submitted as follows:

(i) National Council on the Administration of Justice

NCAJ representatives appeared before the Committee and orally submitted that the Council fully supported both Bills as published; that is, the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026) by Hon. George Murugara, MP and the Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026) by Hon. George Murugara, MP.

(ii) Office of the Attorney General

The Office submitted that the two Bills did not raise any significant constitutional or statutory issues and further affirmed their availability to assist the Committee, should further legal advice be required.

(iii) The Commission on Administrative Justice

It was submitted that the Commission unanimously resolved to fully support all proposals contained in both the Criminal Procedure Code (Amendment) Bill, 2026, and the Penal Code (Amendment) Bill, 2026.

(iv) National Intelligence Service

On the Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026):

- (a) Under Clause 23 on Capital Punishment and Sentencing Discretion, they proposed to replace the rigid phrase "shall be sentenced to death" with flexible language stating the offender "is liable upon conviction to the death penalty or such other lawful sentence as the court may determine after considering mitigating and aggravating circumstances".
- (b) Under Clause 25 on Correction of Marginal Notes, they proposed to correct errors in the marginal notes to explicitly reference sections 295A, 295B, 295C, and 295D.

On the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026):

- (a) Under Clause 8 on Search Procedures for Intersex Persons, it was proposed to expand the newly introduced provision in section 27A to provide a clear legislative framework detailing how an intersex person's physical search preference is to be ascertained and formally recorded before a search is conducted.
- (b) Under Clause 49 on Open Court Judicial Reporting Exceptions, it was proposed to introduce specific legislative exceptions for open court judicial reporting, provided that media outlets redact the identity of any vulnerable individuals involved.
- (c) Under Clause 53 on Definition of Technical Terms, it was proposed to formally introduce a statutory definition for the term "computer" under section 2 of the principal Act.
- (d) Under Clause 80 on Safeguards for the Release of Exhibits, it was proposed to modify the text to explicitly carve out strict exceptions for illicit, hazardous, perishable, or contraband items. These specialized exhibits must be destroyed or disposed of via specific statutory frameworks instead of being returned to owners.
- (e) Under Clause 83 on Delineation of Rules Committee Powers, it was proposed to outline the explicit scope, daily functions, and statutory limitations of the Rules Committee directly within the text.
- (f) Under Clause 83 on Operational Procedures of the Rules Committee, it was proposed to provide a distinct legal procedure governing committee meeting, funding mechanisms, and member tenures. Alternatively, insert an express clause that officially donates the authority to establish these guidelines to the Chief Justice.

(v) Kenya Law Reform Commission

On the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026):

- (a) Under Clause 2 on Interpretation, proposed to amend definitions of *Registrar of the High Court* and *summary trial*, and formally introduce definitions for intersex person and person with mental illness. This aligns the Code with Articles 27 and 28 of the Constitution.
- (b) Under Clauses 3, 4, 5, 6, 9, 36, 41, 43, 44, 45, 55, 57, 63–78, & 81 – Court Nomenclature- Proposed to universally replace "*subordinate court*" with "*magistrate's court*" to align with Article 169 of the Constitution and the Magistrates' Courts Act.
- (c) Under Clause 7 on Sentencing Options (Section 15), proposed to delete all references to corporal punishment (violating Article 29) and mandate that the operational period of a suspended sentence must not exceed the term of the sentence imposed.
- (d) Under Clause 8 on Search Framework for Intersex Persons, proposed to insert a new Section 27A dictating that body searches must be done by an officer of the sex preferred by the intersex person, with strict regard to human decency.
- (e) Under Clauses 10 to 29 on Preventive Proceedings (Sections 43–61A), proposed to repeal Sections 43–61A completely, preventing arbitrary deprivation of personal liberty without a criminal trial.
- (f) Under Clauses 30 & 31 on Regional Administrative Units (Sections 67 & 68), proposed to replace the archaic terms "*province or district*" with "*county or sub-county*" to conform with the devolved system of government.
- (g) Under Clause 32 on Sexual Offences References (Section 77), proposed to substitute old Penal Code numbers with explicit, modern references to the Sexual Offences Act.
- (h) Under Clause 33 on Case Transfers (Section 79), proposed to repeal and replace Section 79 to allow a magistrate to transfer a case to another competent magistrate locally, whether evidence has been taken or not.
- (i) Under Clause 35 on Judicial Oversight on *Nolle Prosequi* (Section 82), proposed to amend Section 82 to legally require the permission of the court before entering a *nolle prosequi*, enforcing Article 157(8) of the Constitution.
- (j) Under Clause 40 on Search Warrants (Section 120), proposed to insert a new subsection forcing all court-issued search warrants to strictly follow the intersex safety rules established under Section 27A.
- (k) Under Clause 49 on Fitness to Stand Trial (Section 162), proposed to amend the text to legally demand: (i) prompt expert psychological checks; (ii) periodic court reviews; (iii) least-restrictive safety measures; and (iv) instant trial resumption upon recovery.
- (l) Under Clause 50 on Insanity Defense Verdicts (Section 166), proposed to require the court to order treatment, supervision, or discharge based on medical evidence and proportionality, completely deleting automatic or indefinite state detention.
- (m) Under Clause 58 on Higher Court Sentencing Committals (Section 221(1)), proposed to mandate that the committing court must record written reasons and afford the convict an opportunity to be heard before transfer. The receiving court must also maintain independent sentencing discretion.
- (n) Under Clause 61 on Mute Accused Persons (Section 280), proposed: (a) to replace stigmatizing terms with person-centered language; and (b) require the court to investigate communication barriers (speech/hearing impairments) and provide accommodations before entering a "not guilty" plea; and (c) ground decisions on proper medical evidence.
- (o) Under Clause 80 on Disposal of Forfeited Property (Section 389A), proposed to mandate that all forfeited property must be disposed of in strict compliance with the Public Procurement and Asset Disposal Act to maximize transparency.
- (p) Under Clause 83 on Rules Committee Composition (Section 394 & 395), proposed to amend the clause to explicitly include legal aid providers, victims' rights experts, and disability rights specialists to reflect a broader spectrum of justice stakeholders.

(vi) Judiciary

On the Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026):

- (a) Under Clause 25 on Distinction of Violence Categories, they requested that Parliament reconstructs the text to more clearly define the exact nature and threshold of violence separating the two statutory offences.
- (b) On Framework for Plea Bargaining, they requested for clearer sentencing graduations for aggravated robbery to allow prosecutors and defense lawyers to make informed choices.
- (c) On Statutory Conflict in Theft Assaults (Section 298 vs. Section 295B), they noted that Section 298 on assault with intent to steal; 5-year penalty shares no clear legal boundary with the new Section 295B on attempted robbery; assault with intent to steal using violence. Advised the drafting team to amend Section 298 to remove overlapping elements.
- (d) Under Section 295C on Dual Penalty Inconsistencies, proposed a critical rewrite of Section 295C to mandate one single, clear sentencing track.
- (e) On Conflicting Attempt Provisions (Section 297 vs. Section 389), they reviewed ongoing confusion in lower courts where Section 297 (attempted robbery rules) conflicts with Section 389 (the general penalty code for attempts). While Section 389 strictly applies when no specific sentence is provided elsewhere, confusion persists. The Judiciary therefore recommended an immediate clarifying amendment to Section 389 to clear up judicial interpretations.

On the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026):

- (a) The Judiciary proposed a new Section 15A & 15B on the Establishment of the Sentencing Council; to submit a draft rider amendment to insert Section 15A and Section 15B into Cap 75.
- (b) Under Sub-Clause 15A on Council Structure & Composition, they proposed that it be structured as an unincorporated statutory body, chaired by a superior court judge appointed by the Chief Justice. The Council shall consist of one magistrate; plus, one designated representative each from the Attorney General, DPP, Inspector-General of Police, Commissioner General of Prisons, Probation Service, Children's Services, Law Society of Kenya, and the Victim Protection Board. It also includes one public university law lecturer.
- (c) Under Sub-Clause 15B on Mandate & Functions, it was proposed that the operational objectives of the proposed Council be as follows: Promote absolute consistency in bail, bond and sentencing decisions while safeguarding judicial independence, Provide data on current court sentencing tracks and publish public info sheets, Create and publish binding guidelines on bail, bond, and sentences while monitoring their real-world impact and mandate full consideration of crime impacts on victims when updating local court guidelines.

(vii) Kenya National Commission on Human Rights

On the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026):

- (a) Under Clause 8 on Mode of Searching an Intersex Person, Section 27A, KNCHR proposed the following amendments:
 - i. Prohibit any physical searches initiated for the sole purpose of "verifying" or determining an individual's sex characteristics.
 - ii. Mandate that highly intrusive bodily searches (including the removal of clothing) be executed exclusively by qualified medical practitioners.
 - iii. Require that all searches be conducted in strict privacy to preserve bodily integrity and human dignity.
- (b) Under Clauses 10 to 29 on Repeal of Sections 43–61A, on Security for Keeping the Peace, KNCHR fully supported the complete repeal of Sections 43–61A. Proposed that any future preventive measures introduced into the Code be strictly bounded by constitutional necessity, proportionality, and the presumption of innocence.
- (c) Under Clause 35 on Judicial Oversight of Nolle Prosequi (Section 82), they supported the rule requiring the court's permission. Added a new recommendation that prosecutors be

- legally required to present written reasons proving the discontinuance serves public interest, advances justice, and avoids process abuse.
- (d) Under Clause 49 on Fitness to Stand Trial (Section 162), proposed to introduce a mandatory statutory proviso. This rule forces courts to adopt the minimum necessary restriction compatible with the accused's safety and health, in complete harmony with the Mental Health Act (Cap. 248).
 - (e) Under Clause 50 & Clause 51 on Insanity Findings and Repeal of Section 167, they strongly supported the shift to a court-controlled finding of "*not guilty by reason of mental illness*". Resolved to insert a strict addition to Section 166(5): any post-verdict committals must be exclusively to a designated mental health facility operating under Cap. 248 safeguards, completely banning detention in ordinary prisons.
 - (f) Under Clause 54 on Official Language of the Court (Section 198), they proposed to append a general obligation clause to Section 198. This legally requires all courts to provide competent interpretation and necessary procedural accommodations so that accused persons, victims, and witnesses can fully follow all proceedings.

(viii) FIDA-Kenya

On the Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026):

- (a) Under Clause 11, under Section 160A on Limitation of Criminal Liability for Abortion, FIDA proposed restructuring Section 160A into a two-part clause: Subsection (1) to anchor constitutional exemptions, and a new Subsection (2) to explicitly shield registered medical practitioners, nurses, and clinical officers from criminal prosecution or harassment when providing safe termination of pregnancy under constitutionally permitted criteria, fulfilling Article 14 of the Maputo Protocol.
- (b) Under Clause 2, regarding Section 4 on Definitional Term of Life Imprisonment, they proposed to introduce an explicit public safety exception: Life imprisonment shall mean a fixed term of 30 years, provided that for murder arising out of SGBV, femicide, defilement, or sexual violence against vulnerable persons, life imprisonment shall mean the natural life of the convict.
- (c) Under Clauses 15–22 on Abolition of Criminal Defamation and Libel (Sections 194–200), they proposed that Parliament add an explicit subsection within the bill addressing and penalizing the prevalence of TFGBV to safeguard women's constitutional right to privacy.

On the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026):

- (a) Under Clauses 8 & 40 on Body Searches of Intersex Persons (Section 27A), proposed the deletion of the phrase "where reasonably practicable" and substitute it with "shall be conducted" to enforce absolute, mandatory compliance with Article 28 (Right to Dignity).
- (b) Under Clause 33 regarding Section 79 on Transfer of Criminal Cases, proposed to introduce a mandatory conditional proviso that "In matters involving sexual violence, domestic abuse, or children, no transfer shall occur without formally hearing the complainant, and the court must provide written justifications ensuring the transfer will not cause prohibitive costs or re-traumatization".
- (c) Under Clause 35, under Section 82 on Entry of Nolle Prosequi, proposed an explicit amendment that "In serious offenses such as SGBV and domestic violence, the court shall not grant permission for a nolle prosequi unless it certifies that the victim has been fully informed and their views are formally placed on the record, in compliance with the Maputo Protocol".
- (d) Under Clause 42, on Section 131(3) on Forfeiture of Immovable Property, proposed to introduce a mandatory protective sub-clause: Before making a forfeiture order on immovable property, the court must issue a mandatory notice to hear the spouse or dependents residing on or utilizing the property.
- (e) Under Clauses 49 & 50, under Sections 162 & 166 on Fitness to Stand Trial and Mental Illness Verdicts, proposed a fixed temporal and procedural safeguard, that "Any order for institutionalization must be subject to automatic judicial review every 6 months, and

courts must order medical assessments to be strictly gender-responsive and trauma-informed, taking a suspect's full history of domestic abuse into account”.

- (f) Under Clause 83, under Section 395 on Composition of the Criminal Procedure Rules Committee, proposed to expand the committee's statutory membership to explicitly include representatives from women's rights organizations, disability rights groups, and professional psychologists.

(ix) Witness Protection Agency

On the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026):

- (a) Under Clause 32, proposed to amend section 77(3) by adding the following para “in the case of the Witness Protection Act to imprisonment for a term of not less than ten years upon conviction.
- (b) Under Clause 41, new proposal on amendment of section 123A, INSERT subsection (3) Where the court is satisfied that an accused person has threatened or interfered with a witness, victim or protected person, the court may review, vary, suspend or cancel bail or bond terms.
- (c) Under Clause 83, proposed to insert a new paragraph, (h) the Director of the Witness Protection Agency or an officer of the Agency nominated by the Director: and to renumber subsequent paragraphs accordingly.

(x) National Council for Children's Services

On the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026):

- (a) On Court Nomenclature and Mandatory Jurisdictional Referrals, they proposed the introduction of a new clause: "Notwithstanding the provisions of the Criminal Procedure Code, where a criminal trial involves a child, such a matter shall be referred to the Children's Court referred to under the Children Act, 2022, unless it is otherwise required under any other Statute." This aligns proceedings with the specialized personnel, supportive procedures, and age-appropriate language mandated by the Children Act, 2022.
- (b) On Clause 40, on Child Protection Safeguards, under Section 120, they proposed to insert a mandatory new Subsection 6: "Where the search under this section involves a child, the search shall be conducted in a manner that upholds the dignity and privacy of a child to accord with Article 53 of the Constitution and shall be conducted in the presence of a parent, guardian, probation officer, [or] in the presence of an appropriate adult." This statutory intervention matches Section 220 of the Children Act, Cap. 141, ensuring children are protected from unsafe or un-monitored body searches.
- (c) On Clauses 49 & 50, on Child Safeguards in Assessing Fitness to Stand Trial, under Sections 162 & 166, they proposed to introduce an explicit, mandatory child rider clause. When a question of fitness to stand trial involves a minor, the court must legally be bound to:
 - i. Ascertain and officially verify the exact age of the child;
 - ii. Ensure that the child is accompanied at every stage by a parent, guardian, probation officer, or an appropriate adult;
 - iii. Consider whether the matter is suitable for diversion in strict compliance with the restorative justice tracks set out under Sections 227 and 228 of the Children Act, 2022.

(xi) Ministry of Interior & National Administration

On the Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026):

- (a) Under Clause 5 on Abolition of Prison Terms for Petty Fines and Compensation, they proposed to ban imprisonment for failing to pay minor statutory sums like Kshs. 2,500 or Kshs. 12,500. Courts must instead be directed to sentence these individuals to Community Service Orders.
- (b) Under Clause 25 on Restoring Sentencing Discretion for Aggravated & Attempted Robbery, they proposed to amend Clause 25 to declare that the 14-year term serves as

a statutory maximum penalty rather than a mandatory minimum, restoring complete sentencing discretion to judicial officers.

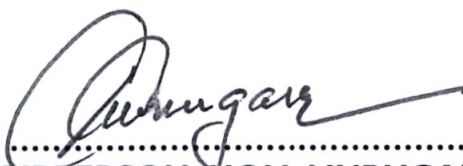
On the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026):

- (a) Under Clause 8 on Dispute Resolution in Searching Intersex Persons, they proposed to amend the clause to dictate that if an intersex person refuses to choose, a police officer of the rank of Inspector and above shall decide the matter. If the suspect is unsatisfied with this police choice, the final determination must immediately be made by a Magistrate holding jurisdiction.
- (b) Under Clause 33 on Safeguards Against Disrupted Judgments During Case Transfers, they proposed to insert a strict conditional rule: Where a judgment is pending, the Magistrate who has dealt with the case shall not transfer it to another court unless proper cause is formally shown.
- (c) Under Clause 49 on appeal Rights and Medical Autonomy in Mental Fitness Evaluations, they proposed to secure a two-pronged procedural adjustment:
 - i. Explicitly insert a statutory right to appeal any court finding that declares an accused fit or unfit to stand trial.
 - ii. Grant the accused or their family members the legal opportunity to introduce their own private medical doctor to witness or participate in the state's psychiatric evaluation.
- (d) Under Clause 52 on Exclusion of Cost Awards in Private Criminal Prosecutions, they proposed that costs should not be awarded in private criminal proceedings; any financial claims or damages must be dealt with separately in civil suits.
- (e) Under Clause 58 on Elimination of Punitive Committals for Children, they proposed to completely delete Section 58 to protect young individuals in conflict with the law and mirror the spirit of the Children Act, 2022.
- (f) Under Clause 80 on Multi-Faceted Legal Harmonization for Forfeited Asset Disposal, they proposed to modify the clause to reference other relevant frameworks, explicitly including the Ethics and Anti-Corruption Act and the Proceeds of Crime and Anti-Money Laundering Act.

MIN. NO. DDC/JLAC/198/2026:

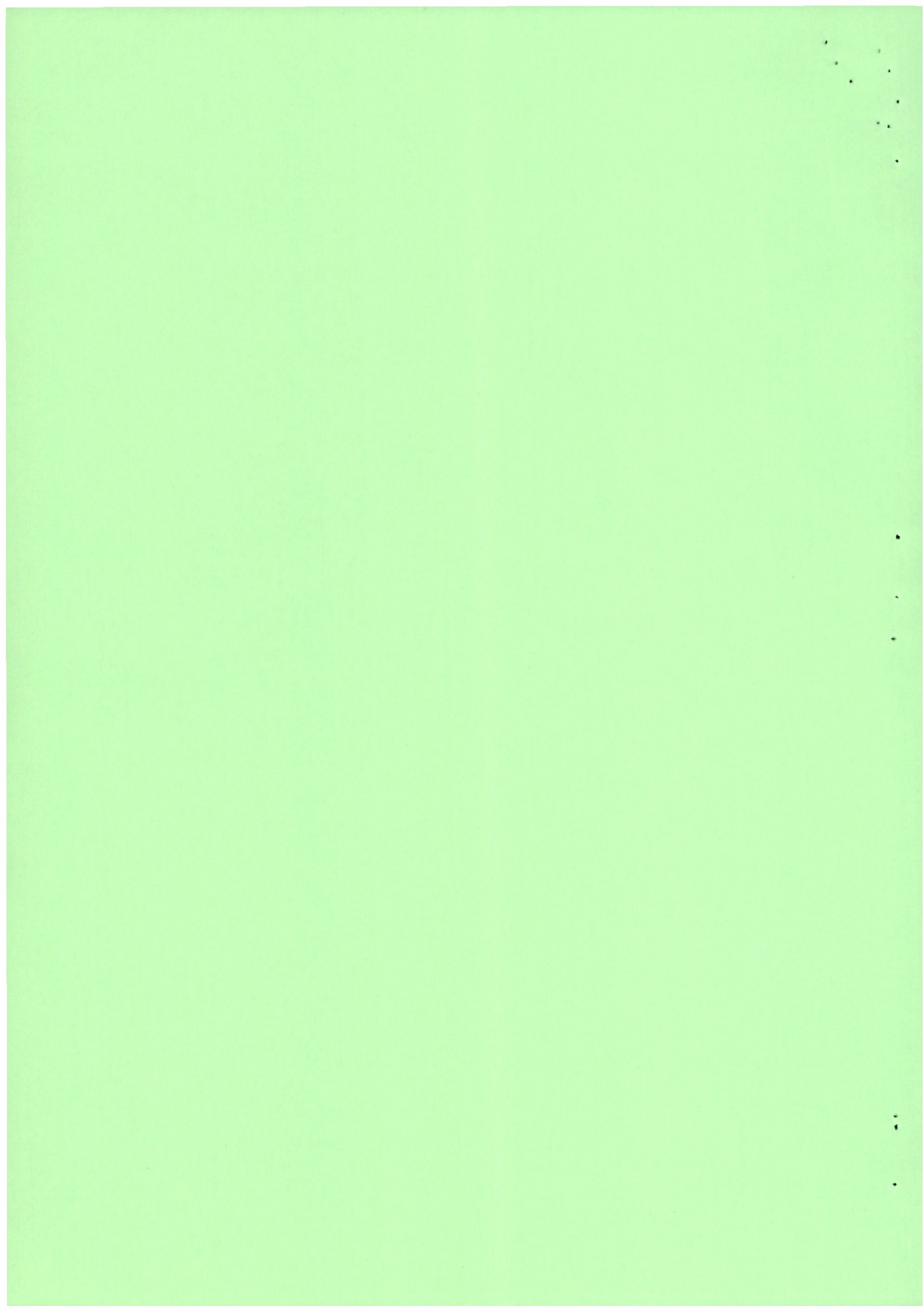
ADJOURNMENT

There being no other business, the meeting was adjourned at seven minutes past one o'clock. Next meeting to be held on notice.

SIGNED:  DATE: 13.8.2026
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)

Annexure **3**

**Criminal Procedure Code (Amendment)
Bill (National Assembly Bill No. 11 of
2026)**



SPECIAL ISSUE

Kenya Gazette Supplement No. 62 (National Assembly Bills No. 11)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

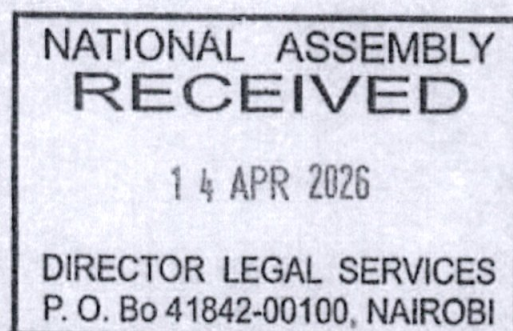
NATIONAL ASSEMBLY BILLS, 2026

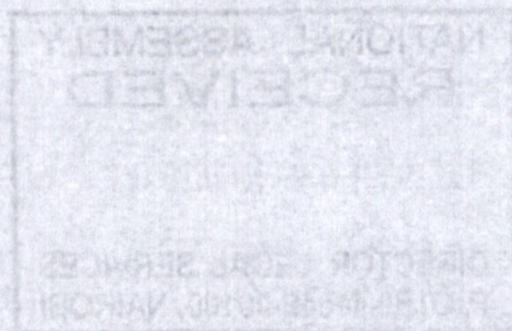
NAIROBI, 13th March, 2026

CONTENT

Bill for Introduction into the National Assembly —

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**THE CRIMINAL PROCEDURE CODE
(AMENDMENT) BILL, 2026**

A Bill for

AN ACT of Parliament to amend the Criminal Procedure Code

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the Criminal Procedure Code (Amendment) Act, 2026.

Short title.

2. Section 2 of the Criminal Procedure Code (hereinafter referred to as the “principal Act”), is amended—

Amendment of section 2 of Cap. 75.

- (a) in the definition of “Registrar of the High Court”, by deleting the words “includes a Deputy Registrar of the High Court and a district registrar of the High Court” and substituting therefor the words “means the Registrar of the High Court appointed pursuant to section 18 of the High Court (Organization and Administration) Act”;
- (b) in the definition of “summary trial”, by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”; and
- (c) by inserting the following new definitions in proper alphabetical sequence—

“intersex person” means a person with a congenital condition in which the biological sex characteristics cannot be exclusively categorized in the common binary of female or male due to inherent and mixed anatomical, hormonal, gonadal or chromosomal patterns, which could be apparent prior to, at birth, in childhood, puberty or adulthood;

“person with mental illness” has the meaning assigned to it under section 2 of the Mental Health Act;

Cap. 248.

3. Section 4 of the principal Act is amended by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”.

Amendment of section 4 of Cap. 75.

4. Section 5 of the principal Act is amended in subsection (2), by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

Amendment of section 5 of Cap. 75.

5. Section 7 of the principal Act is amended—

Amendment of section 7 of Cap. 75.

(a) in subsection (1), by deleting the words "subordinate court of the first class" and substituting therefor the words "magistrate's court";

(b) by deleting subsection (2);

(c) by deleting subsection (3).

6. Section 14 of the principal Act is amended in subsection (3) by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

Amendment of section 14 of Cap. 75.

7. Section 15 of the principal Act is amended—

Amendment of section 15 of Cap. 75.

(a) in subsection (1) by deleting the words "corporal punishment";

(b) by inserting the following new subsection immediately after subsection (1) —

"(1A) The operational period under subsection (1) shall not exceed the term of the sentence imposed."

8. The principal Act is amended by inserting the following new section immediately after section 27—

Insertion of new section 27A in Cap. 75.

Mode of searching an intersex person.

27A. Whenever it is necessary to cause an intersex person to be searched, the search shall where reasonably practicable be conducted by a person of the sex which the intersex person shall prefer with strict regard to decency and in such manner as to protect the dignity of the intersex person.

9. Section 36 of the principal Act is amended by deleting the words "subordinate court" wherever they appear and substituting therefor the words "magistrate court".

Amendment of section 36 of Cap. 75.

10. The principal Act is amended by repealing section 43.

Repeal of section 43 of Cap. 75.

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| 44. | 11. The principal Act is amended by repealing section | Repeal of section 44 of Cap. 75. |
| 45. | 12. The principal Act is amended by repealing section | Repeal of section 45 of Cap. 75. |
| 46. | 13. The principal Act is amended by repealing section | Repeal of section 46 of Cap. 75. |
| 47. | 14. The principal Act is amended by repealing section | Repeal of section 47 of Cap. 75. |
| 48. | 15. The principal Act is amended by repealing section | Repeal of section 48 of Cap. 75. |
| 49. | 16. The principal Act is amended by repealing section | Repeal of section 49 of Cap. 75. |
| 50. | 17. The principal Act is amended by repealing section | Repeal of section 50 of Cap. 75. |
| 51. | 18. The principal Act is amended by repealing section | Repeal of section 51 of Cap. 75. |
| 52. | 19. The principal Act is amended by repealing section | Repeal of section 52 of Cap. 75. |
| 53. | 20. The principal Act is amended by repealing section | Repeal of section 53 of Cap. 75. |
| 54. | 21. The principal Act is amended by repealing section | Repeal of section 54 of Cap. 75. |
| 55. | 22. The principal Act is amended by repealing section | Repeal of section 55 of Cap. 75. |
| 56. | 23. The principal Act is amended by repealing section | Repeal of section 56 of Cap. 75. |
| 57. | 24. The principal Act is amended by repealing section | Repeal of section 57 of Cap. 75. |
| 58. | 25. The principal Act is amended by repealing section | Repeal of section 58 of Cap. 75. |
| 59. | 26. The principal Act is amended by repealing section | Repeal of section 59 of Cap. 75. |
| 60. | 27. The principal Act is amended by repealing section | Repeal of section 60 of Cap. 75. |
| 61. | 28. The principal Act is amended by repealing section | Repeal of section 61 of Cap. 75. |

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29. The principal Act is amended by repealing section 61A.

Repeal of section 61A of Cap. 75.

30. Section 67 of the principal Act is amended by deleting the words "province or district" wherever they appear and substituting therefor the words "county or sub-county".

Amendment of section 67 of Cap. 75.

31. Section 68 of the principal Act is amended in subsection (1) by deleting the word "district" and substituting therefor the word "county".

Amendment of section 68 of Cap. 75.

32. Section 77 of the principal Act is amended in subsection (2) by deleting the words "sections 140, 141, 145, 166 and 167 of the Penal Code (Cap. 63)" and substituting therefor the words "Sexual Offences Act".

Amendment of section 77 of Cap. 75.

33. The principal Act is amended by deleting section 79 and substituting therefor the following new section—

Repeal and replacement of section 79 of Cap. 75.

Transfer of cases between magistrates.

79. A magistrate may transfer a case of which the magistrate has taken cognizance to any other magistrate with competent jurisdiction to try that case within the local limits of the magistrate's jurisdiction, whether evidence has been taken in that case or not.

34. Section 80 of the principal Act is amended by deleting the words "a magistrate holding a subordinate court of the first class" and substituting therefor the words "another magistrate's court with competent jurisdiction".

Amendment of section 80 of Cap. 75.

35. Section 82 of the principal Act is amended—

Amendment of section 82 of Cap. 75.

- (a) in subsection (1) by deleting the words "may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Republic intends that the proceedings shall not continue" and substituting therefor the words "with the permission of the court may enter a *nolle prosequi*"; and
- (b) in subsection (2), by inserting the words "with the permission of the court" immediately after the words "*nolle prosequi* is".

36. Section 87 of the principal Act is amended by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”.
Amendment of section 87 of Cap. 75.
37. The principal Act is amended by repealing section 89.
Repeal of section 89 of Cap. 75.
38. The principal Act is amended by repealing section 90.
Repeal of section 90 of Cap. 75.
39. Section 105 of the principal Act is amended in subsection (1) by deleting the words “empowered to hold a subordinate court of the first class” and substituting therefor the words “with competent jurisdiction”.
Amendment of section 105 of Cap. 75.
40. Section 120 of the principal Act is amended by inserting the following new subsection immediately after subsection (4) —
“(5) If that person is an intersex person, the provisions of sections 27A shall apply.”
Amendment of section 120 of Cap. 75.
41. Section 123 of the principal Act is amended in subsection (3), by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”.
Amendment of section 123 of Cap. 75.
42. Section 131 of the principal Act is amended in subsection (3), by deleting the word “movable”.
Amendment of section 131 of Cap. 75.
43. Section 137B of the principal Act is amended by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”.
Amendment of section 137B of Cap. 75.
44. Section 143 of the principal Act is amended in subsection (1) by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”.
Amendment of section 143 of Cap. 75.
45. Section 149 of the principal Act is amended in subsection (4) by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”.
Amendment of section 149 of Cap. 75.
46. Section 154 of the principal Act is amended in subsection (1) by deleting the words “magistrate empowered to hold a subordinate court of the first class” and substituting therefor the words “magistrate’s court with competent jurisdiction”.
Amendment of section 154 of Cap. 75.
47. Section 156 of the principal Act is amended by deleting the words “other than a magistrate empowered to
Amendment of section 156 of Cap. 75.

hold a subordinate court of the first class” and substituting therefor the words “with competent jurisdiction”.

48. Section 157 of the principal Act is amended in subsection (1) by deleting the words “magistrate empowered to hold a subordinate court of the first class (as the case may be)” and substituting therefor the words “magistrate’s court with competent jurisdiction as the case may be”.

Amendment of
section 157 of
Cap. 75.

49. The principal Act is amended by repealing section 162 and substituting therefor the following new section—

Repeal and
replacement of
section 162 of
Cap. 75.

Fitness to stand trial.

162. (1) This section shall apply where, in the course of criminal proceedings against an accused person, a question arises, at the instance of the defence, the prosecution, the court or any other person, as to whether or not the accused person is fit to be tried.

(2) An accused person shall be deemed to be unfit to be tried if such person is unable, by reason of mental illness, to understand the nature or course of the proceedings so as to—

- (a) plead to the charge;
- (b) instruct a legal representative;
- (c) make a proper defence; or
- (d) understand the evidence.

(3) Where an accused person is before court being tried or is to be tried, any question as to whether or not such person is fit to be tried shall be determined by the court.

(4) For the purposes of determining whether or not to exercise a power under subsection (3), the court—

- (a) for that purpose, may commit an accused person to a mental health facility for a period of not more than fourteen days; and

- (b) shall direct that the accused person concerned be examined by a qualified mental health practitioner in the mental health facility.

(5) Within the period of committal authorised by the court under subsection (4), the medical officer in charge of the mental health facility shall report to the court on whether, in his or her opinion, the accused person committed under subsection (4)(a), is a person with mental illness and is in need of inpatient care or outpatient care or treatment in a mental health facility.

(6) Where the court determines that an accused person is unfit to be tried that court shall adjourn the proceedings until further order, and may—

- (a) if the court is satisfied, having considered the evidence of a medical officer adduced pursuant to subsection (5) and any other evidence before it, that the accused person is a person with mental illness and is in need of inpatient treatment in a mental health facility, commit the accused person to a specified mental health facility;
- (b) if the court is satisfied, having considered the evidence of a medical officer adduced pursuant to subsection (5) and any other evidence before it, that the accused person is a person with mental illness and is in need of outpatient care or treatment in a mental health facility, make such order as the court may deem fit in relation to the accused person for outpatient care or treatment in a mental health facility:

Provided that the court may release the accused person on bail on sufficient security being given that the accused person will be properly taken care of and prevented from doing injury to themselves or any other person, and for securing attendance before court or such other officer as the court may appoint in that behalf; or

- (c) where the court determines that the accused person is fit to be tried, the proceedings shall continue.

(7) Where, on the trial of an accused person, a question arises as to whether or not the person is fit to be tried and the court considers it is expedient and in the interests of the accused so to do, the court may defer consideration of the question until any time before opening the case for the defence and if, before the question falls to be determined, the court returns a verdict in favour of the accused person or finds the accused person not guilty, as the case may be, on the count or each of the counts on which the accused is being tried, the question shall not be determined and the person shall be acquitted.

(8) Upon a determination having been made by the court that an accused person is unfit to be tried, the court may, on application to it in that behalf, allow evidence to be adduced before it as to whether or not the accused person did the act alleged and if the court is satisfied that there is a reasonable doubt as to whether the accused did the act alleged, the court shall order the accused to be discharged.

(9) Where evidence is adduced before the court under subsection (8) but the court decides not to order the accused person to be

discharged, no person shall publish a report of the evidence or decision until such time, if any, as—

- (a) the trial of the accused person concludes; or
- (b) a decision is made not to proceed with the trial of the person or the trial is otherwise not proceeded with.

(10) A person who contravenes the provisions of subsection (9) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

50. The principal Act is amended by repealing section 166 and substituting therefor the following new section—

Special finding of not guilty.

166. (1) Where an accused person is tried for an offence and the court finds that the accused person committed the offence or made the omission alleged against him or her and, having heard evidence relating to the mental condition of the accused person, finds that—

- (a) the accused person was a person with mental illness at the time; and
- (b) the mental illness was such that the accused person ought not to be held responsible for the act or omission alleged by reason of the fact that the accused—
 - (i) did not know the nature or consequences of the act or omission;
 - (ii) did not know that what the accused person was doing was wrong; or

Repeal and replacement of section 166 of Cap. 75.

perfect principle

(iii) was unable to refrain from committing the act or omission,

the court shall return a special finding to the effect that the accused person is not guilty by reason of inability to understand the nature or consequences of his or her acts or omissions.

(2) The court shall commit a person to a specified mental health facility for a period of not more than fourteen days and direct that during such period the person be examined by the medical officer in charge of the mental health facility.

(3) The court may, on application, after consultation with the medical officer in charge of the mental health facility, extend the period of committal under subsection (2), but the period or the aggregate of the periods for which an accused person may be committed shall not exceed six months.

(4) Within the period of committal authorised by the court under subsection (2), the medical officer in charge of the mental health facility shall report to the court on whether, in his or her opinion, the accused person committed under subsection (2) has mental illness and is in need of inpatient care or treatment in a mental health facility.

(5) If the court, having considered any report submitted to it and such other evidence as may be adduced before it, is satisfied that an accused person found not guilty by reason of inability to understand the nature or consequences of his or her acts or omissions pursuant to subsection (1) has mental illness and is in need of inpatient care or treatment in a mental

health facility, the court shall commit that person to a specified mental health facility.

51. The principal Act is amended by repealing section 167.

Repeal of section 167 of Cap. 75.

52. Section 171 of the principal Act is amended—

Amendment of section 171 of Cap. 75.

(a) in subsection (1), by deleting the words “of a subordinate court of the first or second class”; and

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) A judge of the High Court or a magistrate who acquits or discharges a person accused of an offence may, if the prosecution for the offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, order the private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit:

Provided that—

(i) the costs shall not exceed twenty thousand shillings in the High Court or ten thousand shillings in the case of an acquittal or discharge by a magistrate’s court; and

(ii) no such order shall be made if the judge or magistrate considers that the private prosecutor had reasonable grounds for making his complaint.

53. Section 197 of the principal Act is amended subsection (1)(a) by inserting the word “or a computer” immediately after the word “typewriter”.

Amendment of section 197 of Cap. 75.

54. Section 198 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection—

Amendment of section 198 of Cap. 75.

“(4) The language of all courts shall be Kiswahili, English and Kenya Sign Language.”

55. Section 202 of the principal Act is amended by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”.

Amendment of section 202 of Cap. 75.

56. Section 205 of the principal Act is amended by deleting subsection (3).

Amendment of
section 205 of
Cap. 75.

57. Section 219 of the principal Act is amended by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

Amendment of
section 219 of
Cap. 75.

58. Section 221 of the principal Act is amended —

Amendment of
section 221 of
Cap. 75.

(a) by deleting subsection (1) and substituting therefor the following new subsection —

"(1) Where a person of not less than eighteen years of age is convicted by a magistrate's court of an offence which is punishable by either that court or another magistrate court with competent jurisdiction, and the court convicting him, after obtaining information as to his or her character and antecedents, is of the opinion that they are such that greater punishment should be inflicted than it has power to inflict, that court may, instead of dealing with him or her itself, commit him or her in custody to the other magistrate's court with competent jurisdiction for sentence."

(b) in subsection (2), by deleting the words "subordinate court of the first class" and substituting therefor the words "magistrate's court"; and

(c) in subsection (3), by deleting the words "subordinate court of the first class" and substituting therefor the words "magistrate's court".

59. Section 275(6)(b) of the principal Act is amended by deleting the words "(provided that the assessors, if any, have been discharged)".

Amendment of
section 275(6)(b)
of Cap. 75.

60. Section 277 of the principal Act is amended —

Amendment of
section 277(c) of
Cap. 75.

(a) in paragraph (c) by deleting the words "and the assessors"; and

(b) in the proviso by deleting the words "and assessors";

61. The principal Act is amended by repealing section 280 and substituting therefor the following new section—

Repeal and replacement of section 280 of Cap. 75.

Refusal to plead.

280. If an accused person being arraigned upon an information stands mute of malice, or neither will nor by reason of infirmity can, answer directly to the information, the court may enter a plea of “not guilty” on behalf of the accused person, and plea so entered shall have the same force and effect as if the accused person had actually pleaded it; or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind, and, if he is found of sound mind, shall proceed with the trial, and if he is found of unsound mind, and consequently incapable of making his defence, shall proceed as provided under section 166.

62. Section 334 of the principal Act is amended in subsection (3) by deleting the words “magistrate holding court of the first or second class” and substituting therefor the words “magistrate’s court with competent jurisdiction”.

Amendment of section 334 of Cap. 75.

63. Section 347 of the principal Act is amended in subsection (1)(a) by deleting the words “subordinate court of the first or second class” and substituting therefor the words “magistrate’s court”.

Amendment of section 347 of Cap. 75.

64. Section 348 of the principal Act is amended by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”.

Amendment of section 348 of Cap. 75.

65. Section 348A of the principal Act is amended by deleting the words “subordinate court” wherever they appear and substituting therefor the words “magistrate’s court”.

Amendment of section 348A of Cap. 75.

66. Section 350 of the principal Act is amended in subsection (2) by deleting the words “subordinate court” wherever they appear and substituting therefor the words “magistrate’s court”.

Amendment of section 350 of Cap. 75.

67. Section 354 (3) of the principal Act is amended—

Amendment of section 354 of Cap. 75.

- (a) in paragraph (bb), by deleting the words “subordinate court” wherever they appear and substituting therefor the words “magistrate’s court”; and
- (b) in paragraph (c), by deleting the words “subordinate court” wherever they appear and substituting therefor the words “magistrate’s court”.

68. Section 356 of the principal Act is amended—

Amendment of
section 356 of
Cap. 75.

- (a) in subsection (1), by deleting the words “subordinate court” wherever they appear and substituting therefor the words “magistrate’s court”; and
- (b) in subsection (2), by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”.

69. Section 357 of the principal Act is amended in subsection (1) by deleting the words “subordinate court” wherever they appear and substituting therefor the words “magistrate’s court”.

Amendment of
section 357 of
Cap. 75.

70. Section 358 of the principal Act is amended—

Amendment of
section 358 of
Cap. 75.

- (a) in subsection (1), by deleting the words “subordinate court” wherever they appear and substituting therefor the words “magistrate’s court”;
- (b) in subsection (2), by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”; and
- (c) in subsection (4), by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”.

71. Section 359 of the principal Act is amended in subsection (1) by deleting the words “subordinate courts” and substituting therefor the words “magistrate’s courts”.

Amendment of
section 359 of
Cap. 75.

72. Section 360 of the principal Act is amended by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”.

Amendment of
section 360 of
Cap. 75.

73. Section 361 of the principal Act is amended—

Amendment of
section 361 of
Cap. 75.

- (a) in subsection (1), by deleting the words “subordinate court” wherever they appear and substituting therefor the words “magistrate’s court”;
- (b) in subsection (2), by deleting the words “subordinate court” wherever they appear and substituting therefor the words “magistrate’s court”;
- (c) in subsection (3), by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”; and
- (d) in subsection (4), by deleting the words “subordinate court” wherever they appear and substituting therefor the words “magistrate’s court”.

74. Section 362 of the principal Act is amended by deleting the words “subordinate court” wherever they appear and substituting therefor the words “magistrate’s court”.

Amendment of
section 362 of
Cap. 75.

75. Section 363 of the principal Act is amended—

Amendment of
section 363 of
Cap. 75.

- (a) by deleting subsection (1) and substituting therefor the following new subsection—
- (b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) If a presiding magistrate or head of the court station acting under subsection (1) considers that a finding, sentence or order of the magistrate’s court is illegal or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court.

76. Section 364 of the principal Act is amended—

Amendment of
section 364 of
Cap. 75.

- (a) in subsection (1), by deleting the words “subordinate court” wherever they appear and substituting therefor the words “magistrate’s court”;

(b) in subsection (2), by deleting the words "subordinate court" and substituting therefor the words "magistrate's court"; and

(c) in subsection (3), by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

77. Section 366 of the principal Act is amended by deleting the words "subordinate court" and substituting therefor the words "magistrate's court".

Amendment of
section 366 of
Cap. 75.

78. Section 385 of the principal Act is amended by deleting the words "magistrate empowered to hold a subordinate court of the first or second class" and substituting therefor the words "magistrate's court".

Amendment of
section 385 of
Cap. 75.

79. Section 386 of the principal Act is amended —

Amendment of
section 386 of
Cap. 75.

(a) in subsection (1), by deleting the word "Minister" and substituting therefor the words "Cabinet Secretary"; and

(b) in subsection (2), by deleting the word "Minister" wherever it appears and substituting therefor the words "Cabinet Secretary".

80. The principal Act is amended by inserting the following new sections immediately after section 389A —

Insertion of new
section 389B in
Cap. 75.

Disposal of forfeited
goods.

389B. Where, on the order of a court, goods and other forms of property are to be forfeited to the State, such goods and property shall be disposed of by the Chief Registrar in accordance with Part XIV of the Public Procurement and Asset Disposal Act.

Cap. 412C.

Release of exhibits.

389C. Unless forfeited, all exhibits produced in court shall remain the property of their proprietors and shall, upon proof of such proprietorship, be released to them after judgment unless an appeal has been preferred in which case they shall be released after the determination of the appeal or where no appeal has been filed upon expiry of the time allowed for filing the appeal:

Provided that in appropriate cases, nothing shall prevent a court from ordering the release of such exhibits to their proprietors at any other stage of the trial.

81. Section 391 of the principal Act is amended by deleting the words “subordinate court” and substituting therefor the words “magistrate’s court”.

Amendment of section 391 of Cap. 75.

82. Section 394 of the principal Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”;

Amendment of section 394 of Cap. 75.

83. The principal Act is amended by inserting the following new section immediately after section 394—

Insertion of new section in Cap. 75.

Criminal Procedure Rules Committee.

395. (1) There is established a Criminal Procedure Rules Committee consisting of—

- (a) the Chief Justice, or a judge of the Court of Appeal nominated by the Chief Justice, who shall be the chairperson;
- (b) a judge of the High Court;
- (c) two magistrates, one male and one female and one of whom shall be the Secretary to the Committee;
- (d) the Attorney-General or a state counsel nominated by the Attorney-General;
- (e) the Director of Public Prosecutions or a prosecution person nominated by the Director of Public Prosecutions;
- (f) the Inspector-General of Police or a person nominated by the Inspector-General of Police;
- (g) the Commissioner General of Prisons or a person nominated by the Commissioner General of Prisons;
- (h) the Chief Executive Officer of the Ethics and Anti-Corruption

Commission or an officer of the Ethics and Anti-Corruption Commission nominated by the Chief Executive Officer;

- (i) the Secretary, Probation and Aftercare Services or a person nominated by the Secretary;
- (j) two advocates one male and one female, of not less than five years' standing nominated by the Law Society of Kenya; and
- (k) two representatives of court users one male and one female, nominated by the Chief Justice.

(2) Subject to the powers of the Chief Justice under sections 178 (5), 201, 329F, 357 and 389, the powers of the Attorney-General under section 137O, and the powers of the Cabinet Secretary under sections 386 and 394, the Criminal Procedure Rules Committee shall have the power to make Rules not inconsistent with this Act and, subject thereto, to provide for any matters relating to the procedure of criminal courts.

(3) The Chief Justice may, in consultation with the Criminal Procedure Rules Committee, issue practice notes or directions to resolve procedural difficulties arising under this Act in order to facilitate the attainment of the objects of this Act.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Criminal Procedure Code to align it with the provisions of Article 27 of the Constitution on the right to equal treatment and freedom from discrimination; Article 28 of the Constitution on the right to dignity; Article 29 of the Constitution on the freedom and security of the person; Article 31 of the Constitution on the right to privacy; Article 39 of the Constitution on the right to property; Article 48 of the Constitution on the right of access to justice; Article 49 of the Constitution on the rights of arrested persons; Article 50 of the Constitution on the right to fair hearing, and Article 51 of the Constitution on the right of persons detained, held in custody or imprisoned.

The Bill further seeks to amend the Criminal Procedure Code to review the provisions relating to the transfer of cases between magistrates; to define the operational period for suspended sentences; to align the power of *nolle prosequi*, language of the courts and administrative units with constitutional provisions and to provide for the forfeiture of immovable property; and disposal of forfeited goods and release of exhibits. The Bill also provides special provisions for the trial and defense of persons with mental illness and aligns the Act with the Mental Health Act (Cap. 248). The Bill seeks to enhance procedural efficiency, professionalism, and accountability in the protection of the rights of arrested persons and further ensure the effective functioning of the criminal justice system in Kenya.

The Bill is informed by legislative reform proposals submitted to Parliament by the National Council on the Administration of Justice.

Clause 1 of the Bill is the short title.

Clause 2 of the Bill seeks to amend section 2 of the principal Act in the definition of "Registrar of the High Court" to align with the provisions of the High Court (Organization and Administration) Act, 2015 that establishes the office of "Registrar of the High Court" and remove reference to "district Registrar of the High Court" that no longer exist under that Act.

The amendment also seeks to review the definition of "summary trial" by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The proposal further seeks to introduce new definitions of the words "person with mental illness" and intersex persons.

Clauses 3 and 4 of the Bill seek to amend sections 4 and 5 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 5 of the Bill seeks to amend section 7 of the principal Act by deleting any reference to "subordinate court of the first class" and "subordinate court of the second class" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The ranks of "subordinate court of the first class" and "subordinate court of the second class" do not exist under the Magistrates' Courts Act (Cap. 10).

Clause 6 of the Bill seeks to amend section 14 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Court Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 7 of the Bill proposes to amend section 15 of the principal Act to ensure that the term of the suspended sentence shall not exceed the term of the sentence provided for the offence. The amendment further proposes the deletion of the words "corporal punishment" as a mode of punishment. Article 29(e) of the Constitution provides for the right of a person not to be subjected to corporal punishment.

Clause 8 of the Bill seeks to introduce a new section 27A into the principal Act to provide for the mode of searching an intersex person which shall where reasonably practicable, be conducted by a person of the sex which the intersex person prefers with strict regard to decency of the intersex person. Further, the search is to be conducted in conformity with Article 28 of the Constitution that provides for the right to human dignity.

Clause 9 of the Bill seeks to amend section 36 of the principal Act to amend section 36 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clauses 10-29 of the Bill propose to repeal sections 43-61A of the principal Act that provide for procedure to be followed by the court in

matters relating to security for keeping the peace and good behaviour. The sections proposed for repeal provide for the pre-emptive arrest of a person without the commission of an offence and obligate such a person to execute a bond, based on a suspicion that he or she is likely to commit a crime, without the conduct of a trial to establish the person's guilt or innocence contrary to Articles 27, 28, 39, 49, and 50(2) of the Constitution.

Clause 30 of the Bill seeks to amend section 67 of the principal Act by deleting reference to "province or district" and substituting with the word "county or subcounty" to align the with the administrative units set out in Article 6(1) of the Constitution and section 48 of the County Governments Act, 2012 that provide for sub-counties as administrative units.

Clause 31 of the Bill proposes to amend section 68 of the principal Act by deleting reference to "district" and substituting with the word "county" to align the with the administrative units set out in Article 6(1) of the Constitution.

Clause 32 of the Bill proposes to amend section 77 of the principal Act to delete reference to sections 140, 141, 145, 166 and 167 of the Penal Code (Cap. 63) which were repealed by the Sexual Offences Act, 2006. Further, the proposed amendments seek to make reference to the Sexual Offences Act No. 3 of 2003 to provide that all proceedings in trials relating to the Sexual Offences Act No. 3 of 2006 shall be held in private. The amendments seek to provide for the right to privacy of victims of sexual offences in line with Article 31 of the Constitution.

Clause 33 of the Bill proposes to amend section 79 of the principal Act that relates to the transfer of cases between Magistrates. The amendment seeks to delete reference to "subordinate court" and "subordinate court of the second class" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of "subordinate court of the second class" does not exist under the Magistrates' Courts Act (Cap. 10).

Clause 34 of the Bill proposes to amend section 80 of the principal Act to delete reference to "a magistrate holding a subordinate court of the first class" and substituting with the words "another magistrate's court with competent jurisdiction" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the

Constitution. The rank of "subordinate court of the first class" does not exist under the Magistrates Courts Act (Cap. 10).

Clause 35 of the Bill proposes to amend section 80 of the principal Act to provide that a *nolle prosequi* shall not be entered proceed without the permission of the Court. Article 157(8) of the Constitution provides that the Director of Public Prosecutions may not discontinue a prosecution without the permission of the court.

Clause 36 of the Bill seeks to amend section 87 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clauses 37 and 38 of the Bill seeks to repeal sections 89 and 90 of the principal Act that provide for the manner of making complaints and drawing of charges and the subsequent issuance of summons and warrant of arrest. The provisions provide that an accused person can be directly be brought before a Magistrate, who can then draft a charge and take plea without the process of drafting a charge and making a decision to charge is adhered to contrary to Article 49 of the Constitution that safeguards the right of an accused person to be informed of the reason for the arrest and Article 50 of the Constitution on the right to fair hearing.

Clause 39 of the Bill seeks to amend section 105 of the principal Act to delete reference to "empowered to hold a subordinate court of the first class" and substituting with the words "with competent jurisdiction" to align with section 2 of the Magistrates' Courts Act (Cap. 10) that provides for the definition of "magistrate's court" to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of "subordinate court of the first class" does not exist under the Magistrates' Courts Act (Cap. 10).

Clause 40 of the Bill seeks to amend section 120 of the principal Act to require a police officer or other person executing a search warrant to conduct any searches in relation to intersex persons in a manner that gives strict regard to decency and protects the right to dignity of intersex persons.

Clause 41 of the Bill seeks to amend section 123 of the principal Act by deleting the reference to "subordinate court" and substituting with the words "magistrate's court" to align with section 2 of the Magistrates' Court Act (Cap. 10) that provides for the definition of "magistrate's court"

to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 42 of the Bill seeks to amend section 131(3) of the principal Act to include the forfeiture of immovable property where title to the same has been deposited to court for bail and bond purposes.

Clause 43 of the Bill seeks to amend section 137 of the principal Act by deleting the reference to “subordinate court” and substituting with the words “magistrate’s court” to align with section 2 of the Magistrates’ Courts Act (Cap. 10) that provides for the definition of “magistrate’s court” to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 44 of the Bill seeks to amend section 143 of the principal Act by deleting the reference to “subordinate court” and substituting with the words “magistrate’s court” to align with section 2 of the Magistrates’ Courts Act (Cap. 10) that provides for the definition of “magistrate’s court” to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 45 of the Bill seeks to amend section 149 of the principal Act by deleting the reference to “subordinate court” and substituting with the words “magistrate’s court” to align with section 2 of the Magistrates’ Courts Act (Cap. 10) that provides for the definition of “magistrate’s court” to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 46 of the Bill seeks to amend section 154 of the principal Act to delete reference to “magistrate empowered to hold a subordinate court of the first class” and substituting with the words “magistrate’s court with competent jurisdiction” to align with section 2 of the Magistrates’ Courts Act (Cap. 10) that provides for the definition of “magistrate’s court” to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of “subordinate court of the first class” does not exist under the Magistrates’ Courts Act (Cap. 10).

Clause 47 of the Bill seeks to amend section 156 of the principal Act to delete reference to “other than a magistrate empowered to hold a subordinate court of the first class” and substituting with the words “with competent jurisdiction” to align with section 2 of the Magistrates’ Courts Act (Cap. 10) that provides for the definition of “magistrate’s court” to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of “subordinate court of the first class” does not exist under the Magistrates’ Courts Act (Cap. 10).

Clause 48 of the Bill seeks to amend section 157 of the principal Act to delete reference to “magistrate empowered to hold a subordinate court of the first class” and substituting with the words “magistrate’s court with competent jurisdiction” to align with section 2 of the Magistrates’ Courts Act (Cap. 10) that provides for the definition of “magistrate’s court” to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of “subordinate court of the first class” does not exist under the Magistrates’ Courts Act (Cap. 10).

Clauses 49 and 50 of the Bill seek to delete and substitute sections 162 and 167 of the principal Act to provide for the procedure to be followed while handling persons who are found to be unfit to stand to trial and establish timelines for their treatment and periodic review of such persons to enhance access to treatment and rehabilitation rather than imprisonment and punishment.

Clause 51 of the Bill seeks to repeal section 167 of the principal Act that provides for the detention of an accused person with mental illness person at the pleasure of the President for an indeterminate period contrary to Article 29 of the Constitution that provides for protects persons from cruel, inhuman, and degrading treatment.

Clause 52 of the Bill seeks to amend section 171 of the principal Act to delete reference to “subordinate court” or “subordinate court of the first class or second” and substituting with the words “magistrate’s court” to align with section 2 of the Magistrates’ Courts Act (Cap. 10) that provides for the definition of “magistrate’s court” to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of “subordinate court of the first class or second class” does not exist under the Magistrates’ Courts Act (Cap. 10).

Clause 53 of the Bill seeks to amend section 197 of the principal Act to enable the use of computers in the taking of evidence in trials.

Clause 54 of the Bill seeks to amend section 198 of the principal Act to provide the language of all courts to be Kiswahili, English and Kenya Sign Language to reflect the national and official languages as set out in Article 7 of the Constitution.

Clause 55 of the Bill seeks to amend section 202 of the principal Act seeks by deleting the reference to “subordinate court” and substituting with the words “magistrate’s court” to align with section 2 of the Magistrates’ Courts Act (Cap. 10) that provides for the definition of “magistrate’s court” to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 56 of the Bill seeks to amend section 205 of the principal Act by deleting subsection (3) that makes provision for detention of persons in detention camps as mode of punishment. The Detention Camps Act was repealed by the Community Service Orders Act No. 10 of 1998.

Clause 58 of the Bill seeks to amend section 221 of the principal Act to delete reference to “subordinate court” or “subordinate court of the first class or second” and substituting with the words “magistrate’s court” to align with section 2 of the Magistrates’ Courts Act (Cap. 10) that provides for the definition of “magistrate’s court” to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of “subordinate court of the first class or second class” does not exist under the Magistrates’ Courts Act (Cap. 10).

Clauses 59 and 60 of the Bill seeks to amend sections 275 and 277 of the principal Act to delete reference to “assessors”. The role of assessors in murder trials was abolished in the Statute Law (Miscellaneous Amendments) Act, 2007.

Clause 61 of the Bill seeks to amend section 280 of the principal Act to delete the provision for postponement of a trial an accused person with mental illness and their subsequent detention at pleasure of the President in a lunatic asylum prison or other suitable place for safe custody for an indeterminate period which is cruel, inhuman, and degrading treatment contrary to Article 29 of the Constitution.

Clauses 62-79 of the Bill seeks to amend sections 334, 347, 348 , 348A, 350, 354, 356, 357, 358, 359, 360, 361, 362, 363, 364, 366, 385 and 386 of the principal to delete reference to “subordinate court” or “subordinate court of the first class or second” and substituting with the words “magistrate’s court” to align with section 2 of the Magistrates’ Courts Act (Cap. 10) that provides for the definition of “magistrate’s court” to mean a subordinate court established by Article 169(1)(a) of the Constitution. The rank of “subordinate court of the first class or second class” does not exist under the Magistrates’ Courts Act (Cap. 10).

Clause 80 of the Bill seeks to insert new section 389B and 389C in to the principal Act to provide for the disposal of forfeited goods to the state by the Chief Registrar of the Judiciary in accordance with the Public Procurement and Asset Disposal Act, 2015. The amendment further provides for the release of exhibits, to their rightful proprietors upon proof of such proprietorship after judgment or at any other stage of the trial where the Court deems appropriate in accordance with Article 40 that safeguards against the arbitrary deprivation of a person’s property.

Clause 81 of the Bill proposes to amend section 391 of the principal Act seeks by deleting the reference to “subordinate court” and substituting with the words “magistrate’s court” to align with section 2 of the Magistrates’ Courts Act (Cap. 10) that provides for the definition of “magistrate’s court” to mean a subordinate court established by Article 169(1)(a) of the Constitution.

Clause 82 of the Bill proposes to amend section 394 of the principal Act by deleting the reference to “Minister” and substituting with the words “Cabinet Secretary” in line with the Constitution.

Clause 83 of the Bill proposes to introduce new section 395 into the principal Act to provide to establish the Criminal Procedure Rules Committee that have power to make and review rules related to the procedure of criminal courts.

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 on whether the Bill concerns county governments

The Bill does not concern county governments in terms of Article 110(1) 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. Criminal law and courts are functions of the national government as provided in paragraphs 7(b) and 8 of Part 1 of 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 25th February, 2026.

GEORGE GITONGA MURUGARA,
*Chairperson, Departmental Committee on
Justice and Legal Affairs.*

Section 2 of Cap. 75 which it is proposed to amend—

2. Interpretation

In this Code, unless the context otherwise requires—

“cognizable offence” means an offence for which a police officer may, in accordance with the First Schedule or under any law for the time being in force, arrest without warrant;

“complaint” deleted by Act No. 7 of 2007, Sch.;

“drug related offence” means any specified in Part V of the Dangerous Drugs Act (Cap. 245) and includes the possession, manufacture, distribution or receipt of any drug of any quantity whatsoever;

“non-cognizable offence” means an offence for which a police officer may not arrest without warrant;

“officer in charge of a police station” includes any officer superior in rank to an officer in charge of a police station and also includes, when the officer in charge of the police station is absent from the station-house, or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to that officer, and is above the rank of constable, or, when the Inspector-General of the National Police Service so directs, any other police officer so present;

“plea agreement” means an agreement entered into between the prosecution and an accused person in a criminal trial in accordance with Part IV;

“police officer” means a police officer or an administration police officer;

“police station” means a place designated by the Inspector-General as a police station under section 40 of the National Police Service Act, 2011.

“prosecutor” means a public prosecutor or a person permitted by the court to conduct a prosecution under section 88 of the Act;

“public prosecutor” means the Director of Public Prosecutions, a state counsel, a person appointed under section 85 or a person acting under the direction of the Director of Public Prosecutions;

“Registrar of the High Court” includes a Deputy Registrar of the High Court and a district registrar of the High Court;

“summary trial” means a trial held by a subordinate court under Part VI.

Section 4 of Cap. 75 which it is proposed to amend—

4. Offences under Penal Code (Cap. 63)

Subject to this Code, an offence under the Penal Code (Cap. 63) may be tried by the High Court, or by a subordinate court by which the offence is shown in the fifth column of the First Schedule to this Code to be triable.

Section 5 of Cap. 75 which it is proposed to amend—

5. Offences under other laws

(1) An offence under any law other than the Penal Code (Cap. 63) shall, when a court is mentioned in that behalf in that law, be tried by that court.

(2) When no court is so mentioned, it may, subject to this Code, be tried by the High Court, or by a subordinate court by which the offence is shown in the fifth column of the First Schedule to this Code to be triable.

Section 7 of Cap. 75 which it is proposed to amend—

7. Sentences which subordinate courts may pass

(1) A subordinate court of the first class held by—

- (a) a chief magistrate, senior principal magistrate, principal magistrate or senior resident magistrate may pass any sentence authorized by law for any offence triable by that court;
- (b) a resident magistrate may pass any sentence authorized by law for an offence under section 278, 308(1) or 322 of the Penal Code or under the Sexual Offences Act, 2006.

(2) Subject to subsection (1), a subordinate court of the first class may pass the following sentences in cases where they are authorized by law—

- (a) imprisonment for a term not exceeding seven years;
- (b) a fine not exceeding twenty thousand shillings;
- (c) repealed by Act No. 5 of 2003, s. 60.

(3) A subordinate court of the second class may pass the following sentences in cases where they are authorized by law—

- (a) imprisonment for a term not exceeding two years;
- (b) a fine not exceeding ten thousand shillings;
- (c) repealed by Act No. 5 of 2003, s. 60.

(4) Deleted by Act No. 5 of 2003, s. 60.

(5) In determining the extent of a court's jurisdiction under this section to pass a sentence of imprisonment, the court shall have jurisdiction to pass the full sentence of imprisonment provided for in this section in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

Section 14 of Cap. 75 which it is proposed to amend—

14. Sentences in cases of conviction of several offences at one trial

(1) Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.

(3) Except in cases to which section 7(1) applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences—

(a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or

(b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.

(4) For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

Section 15 of Cap. 75 which it is proposed to amend—

15. Suspended Sentences

(1) Any court which passes a sentence of imprisonment for a term of not more than two years for any offence may order that the sentence shall not take effect unless during the period specified by the court (hereinafter called the "operational period") the offender commits another offence,

whether that offence is punishable by imprisonment, corporal punishment or by a fine.

(2) Where the offender is convicted of an offence during the operational period the sentence for the first offence in respect of which the offender was convicted under subsection (1) shall thereupon take effect.

(3) Where under subsection (2) the sentence passed for the first offence under subsection (1) takes effect the sentence passed for the subsequent offence shall run consecutively to the sentence passed for the first offence

Section 36 of Cap. 75 which it is proposed to amend—

36. Detention of persons arrested without warrant

When a person has been taken into custody without a warrant for an offence other than murder, treason, robbery with violence and attempted robbery with violence the officer in charge of the police station to which the person has been brought may in any case and shall, if it does not appear practicable to bring that person before an appropriate subordinate court within twenty-four hours after he has been so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his executing a bond, with or without sureties, for a reasonable amount to appear before a subordinate court at a time and place to be named in the bond, but where a person is retained in custody he shall be brought before a subordinate court as soon as practicable:

Provided that an officer in charge of a police station may release a person arrested on suspicion on a charge of committing an offence, when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.

Section 43 of Cap. 75 which it is proposed to amend—

43. Security for keeping the peace

(1) Whenever a magistrate empowered to hold a subordinate court of the first class is informed that a person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the magistrate shall examine the informant on oath and may as hereinafter provided require the person in respect of whom the information is laid to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit.

(2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of the magistrate's jurisdiction.

(3) When a magistrate not empowered to proceed under subsection (1) has reason to believe that a person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that a breach of the peace or disturbance cannot be prevented otherwise than by detaining the person in custody, the magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the court), and may send him before a magistrate empowered to deal with the case, with a copy of his reasons.

(4) A magistrate before whom a person is sent under this section may detain that person in custody until the completion of the inquiry hereinafter prescribed.

Section 44 of Cap. 75 which it is proposed to amend—

44. Security for good behaviour from persons disseminating seditious matter

Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that there is within the limits of his jurisdiction a person who, within or without those limits, either orally or in writing or in any other manner, disseminates, or attempts to disseminate, or has recently disseminated, or in any way abets the dissemination of—

- (a) Repealed by Act No. 5 of 2003, s. 62;
- (b) matter which is likely to be dangerous to peace and good order within Kenya or is likely to lead to the commission of an offence;
or
- (c) matter concerning a judge which amounts to libel under the Penal Code,

the magistrate may, in the manner provided in this Code, require that person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.

Section 45 of Cap. 75 which it is proposed to amend—

45. Security for good behaviour from suspected persons

Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that a person is taking precautions to

conceal his presence within the local limits of the magistrate's jurisdiction, and that there is reason to believe that the person is taking those precautions with a view to committing an offence, the magistrate may, in the manner hereinafter provided, require that person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.

Section 46 of Cap. 75 which it is proposed to amend—

46. Security for good behaviour from habitual offenders

Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that a person within the local limits of his jurisdiction—

- (a) is by habit a robber, housebreaker or thief; or
- (b) is by habit a receiver of stolen property, knowing it to have been stolen; or
- (c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or
- (d) habitually commits or attempts to commit, or aids or abets in the commission of, an offence punishable under Chapter XXX, Chapter XXXIII or Chapter XXXVI of the Penal Code; or
- (e) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace; or
- (f) is so desperate and dangerous as to render his being at large without security hazardous to the community; or
- (g) is a member of an unlawful society within the meaning of section 4(1) of the Societies Act (Cap. 108),

the magistrate may, in the manner hereinafter provided, require that person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the magistrate thinks fit, or why an order (hereinafter in this Part referred to as a restriction order) should not be made that he be taken to the district in which his home is situated and be restricted to that district during a period of three years:

Provided that where a magistrate is of the opinion that, having regard to all the circumstances of the case, it is desirable that the person be restricted to some other district he may specify that the person shall be so restricted.

Section 47 of Cap. 75 which it is proposed to amend—

47. Order to be made

When a magistrate acting under section 43, section 44, section 45 or section 46 deems it necessary to require a person to show cause, he shall make an order in writing setting out—

- (a) the substance of the information received;
- (b) in the case of a restriction order, the district to which the person concerned is to be restricted for a period of three years;
- (c) in any other case—
 - (i) the amount of the bond to be executed;
 - (ii) the term for which it is to be in force; and
 - (iii) the number, character and class of securities, if any, required.

Section 48 of Cap. 75 which it is proposed to amend—

48. Procedure in case of person present in court

If the person in respect of whom an order under section 47 is made present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

Section 49 of Cap. 75 which it is proposed to amend—

49. Summons or warrant in case of person not so present

If the person in respect of whom an order is made under section 47 is not present in court, the magistrate shall issue a summons requiring him to appear, or, when the person is in custody, a warrant directing the officer in whose custody he is to bring him before the court:

Provided that, whenever it appears to the magistrate upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the magistrate) that there is reason to fear the commission of a breach of the peace, and that a breach of the peace cannot be prevented otherwise than by the immediate arrest of the person, the magistrate may at any time issue a warrant for his arrest.

Section 50 of Cap. 75 which it is proposed to amend—

50. Copy of order under section 47 to accompany summons or warrant

Every summons or warrant issued under section 49 shall be accompanied by a copy of the order made under section 47, and the copy

shall be delivered by the officer serving or executing the summons or warrant to the person served with or arrested under it.

Section 51 of Cap. 75 which it is proposed to amend—

51. Power to dispense with personal attendance

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of a person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by an advocate.

Section 52 of Cap. 75 which it is proposed to amend—

52. Inquiry as to truth of information

(1) When an order under section 47 has been read or explained under section 48 to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under section 49, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

(2) The inquiry shall be made, as nearly as may be practicable, in the manner prescribed by this Code for conducting trials and recording evidence in trials before subordinate courts.

(3) For the purposes of this section, the fact that a person comes within the provisions of section 46 may be proved by evidence of general repute or otherwise.

(4) Where two or more persons have been associated together in the matter under inquiry they may be dealt with in the same or separate inquiries, as the magistrate thinks just.

Section 53 of Cap. 75 which it is proposed to amend—

53. Order to give security

(1) If upon an inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour that the person in respect of whom the inquiry is made should be made subject to a restriction order or should execute a bond, with or without sureties, the magistrate shall make an order accordingly:

Provided that—

- (i) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 47;

- (ii) the amount of a bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;
- (iii) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

(2) A person in respect of whom an order is made under this section may appeal to the High Court, and the provisions of Part XI (relating to appeals) shall apply to the appeal.

Section 54 of Cap. 75 which it is proposed to amend—

54. Discharge of person informed against

If on an inquiry under section 52 it is not proved that it is necessary for keeping the peace or maintaining good behaviour that the person in respect of whom the inquiry is made should be subject to a restriction order or should execute a bond, the magistrate shall make an entry on the record to that effect, and, if the person is in custody only for the purposes of the inquiry, shall release him, or, if he is not in custody, shall discharge him.

Section 55 of Cap. 75 which it is proposed to amend—

55. Commencement of period for which security is required

(1) If a person in respect of whom an order is made under section 47 or section 53 is, at the time the order is made, sentenced to or undergoing a sentence of imprisonment, the period of such order shall commence on the expiration of the sentence.

(2) In other cases, the period shall commence on the date of the order unless the magistrate, for sufficient reason, fixes a later date.

Section 56 of Cap. 75 which it is proposed to amend—

56. Contents of bond

The bond to be executed by a person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling or procuring the commission of an offence punishable with imprisonment, wherever it may be committed, shall be a breach of the bond.

Section 57 of Cap. 75 which it is proposed to amend—

57. Power to reject sureties

A magistrate may refuse to accept a surety offered under any of the preceding sections of this Part on the ground that, for reasons to be recorded by the magistrate, the surety is an unfit person.

*Section 58 of Cap. 75 which it is proposed to amend—***58. Procedure on failure of person to give security**

(1) If a person ordered to give security does not give security on or before the date on which the period for which security is to be given commences, he shall, except in the case mentioned in subsection (2), be committed to prison, or, if he is already in prison, be detained in prison until that period expires or until within that period he gives the security to the court or magistrate who made the order requiring it.

(2) When a person has been ordered by a magistrate to give security for a period exceeding one year, the magistrate shall, if the person does not give security, issue a warrant directing him to be detained in prison pending the orders of the High Court, and the proceedings shall be laid as soon as conveniently may be before that court.

(3) The High Court, after examining the proceedings and requiring from the magistrate any further information or evidence which it thinks necessary, may make such order in the case as it thinks fit.

(4) The period, if any, for which any person is imprisoned for failure to give security shall not exceed three years.

(5) If the security is tendered to the officer in charge of the prison, he shall forthwith refer the matter to the court or magistrate who made the order, and shall await the orders of the court or magistrate.

*Section 59 of Cap. 75 which it is proposed to amend—***59. Power to release persons imprisoned for failure to give security**

Whenever a magistrate empowered to hold a subordinate court of the first class is of the opinion that a person imprisoned for failing to give security may be released without hazard to the community, the magistrate shall make an immediate report of the case for the orders of the High Court, and that court may order the person to be discharged.

*Section 60 of Cap. 75 which it is proposed to amend—***60. Power of High Court to cancel bond**

The High Court may at any time, for sufficient reasons to be recorded in writing, cancel any order made under section 47 or section 53.

*Section 61 of Cap. 75 which it is proposed to amend—***61. Discharge of surties**

(1) A surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate empowered to hold a subordinate court of the first class to cancel a bond executed under any of

the preceding sections of this Part within the local limits of his jurisdiction.

(2) On the application being made, the magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom the surety is bound to appear or to be brought before him.

(3) When the person appears or is brought before the magistrate, the magistrate shall cancel the bond and shall order the person to give, for the unexpired portion of the term of the bond, fresh security of the same description as the original security.

(4) Every such order shall for the purposes of sections 56, 57, 58 and 59 be deemed to be an order made under section 53.

Section 61A of Cap. 75 which it is proposed to amend—

61A. Breach of restriction order

A person who, whilst subject to a restriction order, is found outside the district named in the order without the written permission of the chief officer of police of the district, or who fails to comply with any condition attached to that permission, shall be guilty of an offence and liable to imprisonment for a term not exceeding twelve months.

Section 67 of Cap. 75 which it is proposed to amend—

67. Accused person to be sent to district where offence committed

Where a person accused of having committed an offence within Kenya has escaped or removed from the province or district within which the offence was committed and is found within another province or district, the court within whose jurisdiction he is found shall cause him to be brought before it, and shall, unless authorized to proceed in the case, send him in custody to the court within whose jurisdiction the offence is alleged to have been committed or require him to give security for his surrender to that court there to answer the charge and to be dealt with according to law.

Section 68 of Cap. 75 which it is proposed to amend—

68. Removal of accused person under warrant

(1) Where a person is to be sent in custody in pursuance of section 67, a warrant shall be issued by the court within whose jurisdiction he is found, and that warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named and to carry him and deliver him up to the court within whose district the offence was committed or may be tried.

(2) The person to whom the warrant is directed shall execute it according to its tenor without delay.

Section 77 of Cap. 75 which it is proposed to amend—

77. Court to be open

(1) Subject to subsection (2), the place in which a criminal court is held for the purpose of trying an offence shall be deemed an open court to which the public generally may have access, so far as it can conveniently contain them:

Provided that the presiding judge or magistrate may order at any stage of the trial of any particular case that the public generally or any particular person shall not have access to or remain in the room or building used by the court.

(2) Notwithstanding the provisions of subsection (1), the proceedings in the trial of any case under sections 140, 141, 145, 166 and 167 of the Penal Code (Cap. 63) shall be held in private and no person shall, in relation to such trial, publish or cause to be published by any means—

(a) any particulars calculated to lead to the identification of the victim; or

(b) any picture of the victim.

(3) A person who contravenes the provisions of subsection (2) commits an offence and is liable on conviction—

(a) in the case of an individual, to a fine not exceeding one hundred thousand shillings; and

(b) in the case of a body corporate, to a fine not exceeding five hundred thousand shillings

Section 79 of Cap. 75 which it is proposed to amend—

79. Transfer of cases between magistrates

A magistrate holding a subordinate court of the first class—

(a) may transfer a case of which he has taken cognizance to any magistrate holding a subordinate court empowered to try that case within the local limits of the first class subordinate courts' jurisdiction; and

(b) may direct or empower a magistrate holding a subordinate court of the second class who has taken cognizance of a case and whether evidence has been taken in that case or not, to transfer it for trial to himself or to any other specified magistrate within the

local limits of his jurisdiction who is competent to try the accused and that magistrate shall dispose of the case accordingly.

Section 80 of Cap. 75 which it is proposed to amend—

80. Transfer of part-heard cases

If in the course of any trial before a magistrate the evidence appears to warrant a presumption that the case is one which should be tried by some other magistrate, he shall stay proceedings and submit the case with a brief report thereon to a magistrate holding a subordinate court of the first class empowered to direct the transfer of the case under section 79.

Section 82 of Cap. 75 which it is proposed to amend—

82. Power of Director of Public Prosecutions to enter nolle prosequi

(1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Director of Public Prosecutions may enter a nolle prosequi, either by stating in court or by informing the court in writing that the Republic intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the nolle prosequi is entered, and if he has been committed to prison shall be released, or if on bail his recognizances shall be discharged; but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts.

(2) If the accused is not before the court when a nolle prosequi is entered, the registrar or clerk of the court shall forthwith cause notice in writing of the entry of the nolle prosequi to be given to the keeper of the prison in which the accused may be detained.

Section 87 of Cap. 75 which it is proposed to amend—

87. Withdrawal from prosecution in trials before subordinate courts

In a trial before a subordinate court a public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions**, at any time before judgment is pronounced, withdraw from the prosecution of any person, and upon withdrawal—

- (a) if it is made before the accused person is called upon to make his defence, he shall be discharged, but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts;
- (b) if it is made after the accused person is called upon to make his defence, he shall be acquitted.

Section 89 of Cap. 75 which it is proposed to amend—

89. Complaint and charge

(1) Proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without warrant.

****Powers delegated to the Solicitor-General; Deputy Public Prosecutor; Assistant Deputy Public Prosecutor; Principal State Counsel; Provincial State Counsel, Central and Eastern Provinces; Provincial State Counsel, Coast Province; Provincial State Counsel, Nyanza Province; Provincial State Counsel, Rift Valley Province; and Provincial State Counsel, Western Province. (L.N. 106/1984.)**

(2) A person who believes from a reasonable and probable cause that an offence has been committed by another person may make a complaint thereof to a magistrate having jurisdiction.

(3) A complaint may be made orally or in writing, but, if made orally, shall be reduced to writing by the magistrate, and, in either case, shall be signed by the complainant and the magistrate.

(4) The magistrate, upon receiving a complaint, or where an accused person who has been arrested without a warrant is brought before him, shall, subject to the provisions of subsection (5), draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence with which the accused is charged, unless the charge is signed and presented by a police officer.

(5) Where the magistrate is of the opinion that a complaint or formal charge made or presented under this section does not disclose an offence, the magistrate shall make an order refusing to admit the complaint or formal charge and shall record his reasons for the order.

(6) Repealed by Act No. 10 of 1983, Sch.

Section 90 of Cap. 75 which it is proposed to amend—

90. Issue of summons or warrant

(1) Upon receiving a complaint and having signed the charge in accordance with section 89, the magistrate may issue either a summons or a warrant to compel the attendance of the accused person before a subordinate court having jurisdiction to try the offence alleged to have been committed:

Provided that a warrant shall not be issued in the first instance unless the complaint has been made upon oath either by the complainant or by a witness or witnesses.

(2) The validity of proceedings taken in pursuance of a complaint or charge shall not be affected either by a defect in the complaint or charge or by the fact that a summons or warrant was issued without a complaint or charge.

(3) A summons or warrant may be issued on a Sunday.

Section 105 of Cap. 75 which it is proposed to amend—

105. Warrants may be directed to landholders, etc.

(1) A magistrate empowered to hold a subordinate court of the first class may direct a warrant to a landholder, farmer or manager of land within the local limits of his jurisdiction for the arrest of an escaped convict or person who has been accused of a cognizable offence and has eluded pursuit.

(2) The landholder, farmer or manager shall acknowledge in writing the receipt of the warrant and shall execute it if the person for whose arrest it was issued is in or enters on his land or farm or the land under his charge.

(3) When the person against whom the warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a magistrate having jurisdiction, unless security is taken under section 103.

Section 120 of Cap. 75 which it is proposed to amend—

120. Persons in charge of closed place to allow ingress and egress

(1) Whenever a building or other place liable to search is closed, a person residing in or being in charge of the building or place shall, on demand of the police officer or other person executing the search warrant and on production of the warrant, allow him free ingress thereto and egress therefrom and afford all reasonable facilities for a search therein.

(2) If ingress into or egress from the building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 22 or section 23.

(3) Where a person in or about the building or place is reasonably suspected of concealing about his person an article for which search should be made, that person may be searched.

(4) If that person is a woman the provisions of section 27 shall be observed.

Section 123 of Cap. 75 which it is proposed to amend—

123. Bail in certain cases

(1) When a person, other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, that person may be admitted to bail:

Provided that the officer or court may, instead of taking bail from the person, release him on his executing a bond without sureties for his appearance as provided hereafter in this Part.

(2) The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive.

(3) The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.

Section 131 of Cap. 75 which it is proposed to amend—

131. Forfeiture of recognizance

(1) Whenever it is proved to the satisfaction of a court by which a recognizance under this Code has been taken, or, when the recognizance is for appearance before a court, to the satisfaction of that court, that the recognizance has been forfeited, the court shall record the grounds of proof, and may call upon any person bound by the recognizance to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover it by issuing a warrant for the attachment and sale of the movable property belonging to that person, or his estate if he is dead.

(3) A warrant may be executed within the local limits of the jurisdiction of the court which issued it; and it shall authorize the attachment and sale of the movable property belonging to the person without those limits, when endorsed by a magistrate within the local limits of whose jurisdiction the property is found.

(4) If the penalty is not paid and cannot be recovered by attachment and sale, the person so bound shall be liable, by order of the court which issued the warrant, to imprisonment for a term not exceeding six months.

(5) The court may remit a portion of the penalty mentioned and enforce payment in part only.

(6) When a person who has furnished security is convicted of an offence the commission of which constitutes a breach of the conditions of his recognizance, a certified copy of the judgment of the court by which he was convicted may be used as evidence in proceedings under this section against his surety or sureties, and, if the certified copy is so used, the court shall presume that the offence was committed by him unless the contrary is proved.

Section 137B of Cap. 75 which it is proposed to amend—

137B. Plea agreement on behalf of the Republic

A plea agreement on behalf of the Republic shall be entered into by the Director of Public Prosecutions or officers authorized by the Director of Public Prosecutions in accordance with article 157(9) of the Constitution and any other person authorized by any written law to prosecute:

Provided that in any trial before a subordinate court, a public prosecutor may with the prior written approval of the Director of Public Prosecutions or officers subordinate to him, as the case may be, enter into a plea agreement in accordance with section 137A (1).

Section 143 of Cap. 75 which it is proposed to amend—

143. Leave of Director of Public Prosecutions necessary before prosecution instituted

(1) Proceedings for the trial of a person who is not a Kenya citizen for an offence committed within exclusive economic zone and the territorial waters shall not be instituted in any court except with the leave of the Director of Public Prosecutions and upon his certificate that it is expedient that proceedings should be instituted:

Provided that—

- (i) proceedings before a subordinate court previous to the committal of an accused person for trial or to the determination of the court that the offender is to be put upon his trial shall not be deemed proceedings for the trial of the offence committed by the offender for the purposes of the consent and certificate;

- (ii) it shall not be necessary to aver in a charge or information that the consent or certificate of the Director of Public Prosecutions required by this section has been given, and the fact of their having been given shall be presumed unless disputed by the accused person at the trial; and the production of a document purporting to be signed by the Director of Public Prosecutions and containing the consent and certificate shall be sufficient evidence for all the purposes of this section of that consent and certificate;
- (iii) this section shall not prejudice or affect the trial of an act of piracy as defined by the Law of Nations.

(2) In this section, "offence" means an act, neglect or default of such a description as would, if committed in England, be punishable on indictment according to the law of England for the time being in force.

Section 149 of Cap. 75 which it is proposed to amend—

149. Penalty for non-attendance of witness

(1) A person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or who fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine not exceeding five thousand shillings.

(2) The fine shall be levied by attachment and sale of movable property belonging to the witness within the local limits of the jurisdiction of the court.

(3) In default of recovery of the fine by attachment and sale the witness may, by order of the court, be imprisoned as a civil prisoner for a term of fifteen days unless the fine is paid before the end of term.

(4) For good cause shown, the High Court may remit or reduce a fine imposed under this section by a subordinate court.

Section 154 of Cap. 75 which it is proposed to amend—

154. Issue of commission for examination of witness

(1) Whenever, in the course of a proceeding under this Code, the High Court or a magistrate empowered to hold a subordinate court of the first class is satisfied that the examination of a witness is necessary for the ends of justice, and that the attendance of the witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the court or magistrate

may issue a commission to any magistrate within the local limits of whose jurisdiction the witness resides, to take the evidence of the witness.

(2) The magistrate to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in the case of a trial.

Section 156 of Cap. 75 which it is proposed to amend—

156. Power of magistrate to apply for issue of commission

Whenever, in the course of a proceeding under this Code before a magistrate other than a magistrate empowered to hold a subordinate court of the first class, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of the witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the magistrate shall apply to the High Court, stating the reasons for the application; and the High Court may either issue a commission in the manner provided in section 154 or reject the application.

Section 157 of Cap. 75 which it is proposed to amend—

157. Return of commission

(1) After a commission issued under section 154 or section 156 has been duly executed it shall be returned, together with the deposition of the witness examined thereunder, to the High Court or to the magistrate empowered to hold a subordinate court of the first class (as the case may be), and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) A deposition so taken, if it satisfies the conditions prescribed by section 34 of the Evidence Act (Cap. 80) may also be received in evidence at a subsequent stage of the case before another court.

Section 162 of Cap. 75 which it is proposed to amend—

162. Inquiry by court as to soundness of mind of accused

(1)***When in the course of a trial or committal proceedings the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of unsoundness.

(2) If the court is of the opinion that the accused is of unsound mind and consequently incapable of making his defence, it shall postpone further proceedings in the case.

*** Powers delegated to the Minister and to the Permanent Secretary of the Ministry for the time being responsible for prisons, by L.N. 579/1963.

(3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance before the court or such officer as the court may appoint in that behalf.

(4) If the case is one in which bail may not be taken, or if sufficient security is not given, the court shall order that the accused be detained in safe custody in such place and manner as it may think fit, and shall transmit the court record or a certified copy thereof to the Minister for consideration by the President.

(5) Upon consideration of the record the President may by order under his hand addressed to the court direct that the accused be detained in a mental hospital or other suitable place of custody, and the court shall issue a warrant in accordance with that order; and the warrant shall be sufficient authority for the detention of the accused until the President makes a further order in the matter or until the court which found him incapable of making his defence orders him to be brought before it again in the manner provided by sections 163 and 164.

Section 166 of Cap. 75 which it is proposed to amend—

166. Defence of lunacy adduced at trial

(1) Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of that person for that offence that he was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the person is tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission.

(2) When a special finding is so made, the court shall report the case for the order of the President, and shall meanwhile order the accused to be kept in custody in such place and in such manner as the court shall direct.

(3) The President may order the person to be detained in a mental hospital, prison or other suitable place of safe custody.

(4) The officer in charge of a mental hospital, prison or other place in which a person is detained by an order of the President under subsection (3) shall make a report in writing to the Minister for the consideration of the President in respect of the condition, history and circumstances of the person so detained, at the expiration of a period of three years from the date of the President's order and thereafter at the expiration of each period of two years from the date of the last report.

(5) On consideration of the report, the President may order that the person so detained be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.

(6) Notwithstanding the subsections (4) and (5), a person or persons thereunto empowered by the President may, at any time after a person has been detained by order of the President under subsection (3), make a special report to the Minister for transmission to the President, on the condition, history and circumstances of the person so detained, and the President, on consideration of the report, may order that the person be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.

(7) The President may at any time order that a person detained by order of the President under subsection (3) be transferred from a mental hospital to a prison or from a mental hospital, or from any place in which he is detained or remains under supervision to either a prison or a mental hospital.

Section 167 of Cap. 75 which it is proposed to amend—

167. Procedure when accused does not understand

(1) *If the accused, though not insane, cannot be made to understand the proceedings—

- (a) in cases tried by a subordinate court, the court shall proceed to hear the evidence, and, if at the close of the evidence for the prosecution, and, if the defence has been called upon, of any evidence for the defence, the court is of the opinion that the

evidence which it has heard would not justify a conviction, it shall acquit and discharge the accused, but if the court is of the opinion that the evidence which it has heard would justify a conviction it shall order the accused to be detained during the President's pleasure; but every such order shall be subject to confirmation by the High Court;

- (b) in cases tried by the High Court, the Court shall try the case and at the close thereof shall either acquit the accused person or, if satisfied that the evidence would justify a conviction, shall order that the accused person be detained during the President's pleasure.

(2) A person ordered to be detained during the President's pleasure shall be liable to be detained in such place and under such conditions as the President may from time to time by order direct, and whilst so detained shall be deemed to be in lawful custody.

(3) The President may at any time of his own motion, or after receiving a report from any person or persons thereunto empowered by him, order that a person detained as provided in subsection (2) be discharged or otherwise dealt with, subject to such conditions as to the person remaining under supervision in any place or by any person, and such other conditions for ensuring the welfare of the detained person and the public, as the President thinks fit.

(4) When a person has been ordered to be detained during the President's pleasure under paragraph (a) or paragraph (b) of subsection (1), the confirming or presiding judge shall forward to the Minister a copy of the notes of evidence taken at the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

Section 171 of Cap. 75 which it is proposed to amend—

171. Power to order costs against accused or private prosecutor

(1) A judge of the High Court or a magistrate of a subordinate court of the first or second class may order a person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as the judge or magistrate may deem fit, in addition to any other penalty imposed.

(2) A judge of the High Court or a magistrate of a subordinate court of the first or second class who acquits or discharges a person accused of an offence may, if the prosecution for the offence was originally instituted on a summons or warrant issued by a court on the application of a private

prosecutor, order the private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit:

Provided that—

- (i) the costs shall not exceed twenty thousand shillings in the High Court or ten thousand shillings in the case of an acquittal or discharge by a subordinate court; and
- (ii) no such order shall be made if the judge or magistrate considers that the private prosecutor had reasonable grounds for making his complaint.

Section 197 of Cap. 75 which it is proposed to amend—

197. Manner of recording evidence before magistrate

(1) In trials by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner—

- (a) the evidence of each witness shall be taken down in writing or on a typewriter in the language of the court by the magistrate, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the magistrate, and shall form part of the record;
- (b) such evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative:

Provided that the magistrate may take down or cause to be taken down any particular question and answer.

(2) Notwithstanding the provisions of subsection (1), a record of any proceedings at a trial by or before a magistrate may be taken in shorthand if the magistrate so directs; and a transcript of the shorthand shall be made if the magistrate so orders, and the transcript shall form part of the record.

(3) If a witness asks that his evidence be read over to him the magistrate shall cause that evidence to be read over to him in a language which he understands.

Section 198 of Cap. 75 which it is proposed to amend—

198. Interpretation of evidence to accused or his advocate

(1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language which he understands.

(2) If he appears by advocate and the evidence is given in a language other than English and not understood by the advocate, it shall be interpreted to the advocate in English.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to interpret as much thereof as appears necessary.

(4) The language of the High Court shall be English, and the language of a subordinate court shall be English or Swahili.

Section 202 of Cap. 75 which it is proposed to amend—

202. Non-appearance of complainant at hearing

If, in a case which a subordinate court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, the court shall thereupon acquit the accused, unless for some reason it thinks it proper to adjourn the hearing of the case until some other date, upon such terms as it thinks fit, in which event it may, pending the adjourned hearing, either admit the accused to bail or remand him to prison, or take security for his appearance as the court thinks fit.

Section 205 of Cap. 75 which it is proposed to amend—

205. Adjournment

(1) The court may, before or during the hearing of a case, adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present, and in the meantime the court may allow the accused person to go at large, or may commit him to prison, or may release him upon his entering into a recognizance with or without sureties conditioned for his appearance at the time and place to which the hearing or further hearing is adjourned:

Provided that no such adjournment shall be for more than thirty clear days, or, if the accused person has been committed to prison, for more than fifteen clear days, the day following that on which the adjournment is made being counted as the first day.

(2) Notwithstanding subsection (1), the court may commit the accused persons to police custody—

- (a) for not more than three clear days if there is no prison within five miles of the court-house; or
- (b) for not more than seven clear days if there is no prison within five miles of the court-house and the court is not due to sit again at that court-house within three days; or
- (c) at the request of the accused person, for not more than fifteen clear days.

(3) For the purposes of this section, in relation to any case where the maximum sentence for the offence with which the accused person is charged is punishable only by fine, or by imprisonment not exceeding twelve months with or without a fine "prison" shall be deemed to include a detention camp established in accordance with the Detention Camps Act (Cap. 91).

Section 219 of Cap. 75 which it is proposed to amend—

219. Limitation of time for summary trials in certain cases

Except where a longer time is specially allowed by law, no offence the maximum punishment for which does not exceed imprisonment for six months, or a fine of one thousand shillings, or both, shall be triable by a subordinate court, unless the charge or complaint relating to it is laid within twelve months from the time when the matter of the charge or complaint arose.

Section 221 of Cap. 75 which it is proposed to amend—

221. Committal to higher court for sentence

(1) Where a person of not less than eighteen years of age is convicted by a subordinate court of the second class of an offence which is punishable by either that court or a subordinate court of the first class, and the court convicting him, after obtaining information as to his character and antecedents, is of the opinion that they are such that greater punishment should be inflicted than it has power to inflict, that court may, instead of dealing with him itself, commit him in custody to the Resident Magistrate's Court for sentence.

(2) Where a person who is not less than eighteen years of age is convicted by a subordinate court of the first class of an offence which is punishable by either that court or the High Court, and the court convicting him, after obtaining information as to his character and antecedents, is of the opinion that they are such that greater punishment should be inflicted than it has power to inflict, that court may, instead of dealing with him itself, commit him in custody to the High Court for sentence.

(3) Where the offender is committed under subsection (1) or subsection (2) for sentence, the court to which he is committed shall inquire into the circumstances of the case, and may deal with the offender in any manner in which he could be dealt with if he had been convicted by that court; and, if that court passes a sentence which the court convicting him had not the power to pass, the offender may appeal against the sentence to the High Court (if sentenced by a subordinate court of the first class), or to the Court of Appeal (if sentenced by the High Court), but otherwise he shall have the same right of appeal in all respects as if he had been sentenced by the court which convicted him.

Section 275 of Cap. 75 which it is proposed to amend—

275. Orders for amendment of information, separate trial, and postponement of trial

(1) Every objection to an information for a formal defect on the face thereof shall be taken immediately after the information has been read over to the accused person and not later.

(2) Where, before a trial upon information or at any stage of the trial, it appears to the court that the information is defective, the court shall make an order for the amendment of the information as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice; and any amendments shall be made upon such terms as to the court shall seem just.

(3) Where an information is so amended, a note of the order for amendment shall be endorsed on the information, and the information shall be treated for the purposes of all proceedings in connexion therewith as having been filed in the amended form.

(4) Where, before a trial upon information or at any stage of the trial, the court is of the opinion that the accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same information, or that for any other reason it is desirable to direct that the accused should be tried separately for any one or more offences charged in an information, the court may order a separate trial of any count or counts of the information.

(5) Where, before a trial upon information or at any stage of the trial, the court is of the opinion that the postponement of the trial of the accused is expedient as a consequence of the exercise of any power of the court under this Code, the court shall make such order as to the postponement of the trial as appears necessary.

(6) Where an order of the court is made under this section for a separate trial or for postponement of a trial—

- (a) Repealed by Act No. 7 of 2007, Sch.;
- (b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate information, and the procedure on the postponed trial shall be the same in all respects (provided that the assessors, if any, have been discharged) as if the trial had not commenced; and
- (c) the court may make such order as to admitting the accused to bail, and as to the enlargement of recognizances and otherwise, as the court thinks fit.

(7) A power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

Section 277 of Cap. 75 which it is proposed to amend—

277. Procedure in case of previous convictions

Where an information contains a count charging an accused person with having been previously convicted for an offence, the procedure shall be as follows—

- (a) the part of the information stating the previous conviction shall not be read out in court, nor shall the accused be asked whether he has been previously convicted as alleged in the information, unless and until he has either pleaded guilty to or been convicted of the subsequent offence;
- (b) if he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the information;
- (c) if he answers that he has been so previously convicted, the judge may proceed to pass sentence on him accordingly; but if he denies that he has been so previously convicted, or refuses to or does not answer the question, the court and the assessors shall then hear evidence concerning the previous conviction:

Provided that, if upon the trial of a person for a subsequent offence that person gives evidence of his own good character, the advocate for the prosecution, in answer thereto, may give evidence of the conviction of that person for the previous offence or offences before a verdict of guilty is returned, and the court and assessors shall inquire concerning the previous

conviction or convictions at the same time that they inquire concerning the subsequent offence.

Section 280 of Cap. 75 which it is proposed to amend—

280. Refusal to plead

(1) If an accused person being arraigned upon an information stands mute of malice, or neither will nor by reason of infirmity can, answer directly to the information, the court may order the Registrar or other officer of the court to enter a plea of "not guilty" on behalf of the accused person, and plea so entered shall have the same force and effect as if the accused person had actually pleaded it; or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind, and, if he is found of sound mind, shall proceed with the trial, and if he is found of unsound mind, and consequently incapable of making his defence, shall order the trial to be postponed and the accused person to be kept meanwhile in safe custody in such place and manner as the court thinks fit, and shall report the case for the order of the President.

(2) The President may order the accused person to be confined in a lunatic asylum, prison or other suitable place for safe custody.

Section 334 of Cap. 75 which it is proposed to amend—

334. Warrant for levy of fine, etc.

(1) When a court orders money to be paid by an accused person or by a prosecutor or complainant for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on the movable and immovable property of the person ordered to pay it by distress and sale under warrant; but if he shows sufficient movable property to satisfy the order his immovable property shall not be sold.

(2) The person may pay or tender to the officer having the execution of the warrant the sum therein mentioned together with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute it.

(3) A warrant under this section may be executed within the local limits of the jurisdiction of the court issuing it, and it shall authorize the distress and sale of property belonging to the person without those limits when endorsed by a magistrate holding a subordinate court of the first or second class within the local limits of whose jurisdiction the property was found.

Section 347 of Cap. 75 which it is proposed to amend—

347. Appeal to High Court

(1) Save as is in this Part provided—

(a) a person convicted on a trial held by a subordinate court of the first or second class may appeal to the High Court; and

(b) Repealed by Act No. 5 of 2003, s. 93.

(2) An appeal to the High Court may be on a matter of fact as well as on a matter of law.

Section 348 of Cap. 75 which it is proposed to amend—

348. No appeal on plea of guilty, nor in petty cases

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

Section 348A of Cap. 75 which it is proposed to amend—

348A. Right of appeal against acquittal, order of refusal or order of dismissal

(1) When an accused person has been acquitted on a trial held by a subordinate court or High Court, or where an order refusing to admit a complaint or formal charge, or an order dismissing a charge, has been made by a subordinate court or High Court, the Director of Public Prosecutions may appeal to the High Court or the Court of Appeal as the case may be, from the acquittal or order on a matter of fact and law.

(2) If the appeal under subsection (1) is successful, the High Court or Court of Appeal as the case may be, may substitute the acquittal with a conviction and may sentence the accused person appropriately.

Section 350 of Cap. 75 which it is proposed to amend—

350. Petition of appeal

(1) An appeal shall be made in the form of a petition in writing presented by the appellant or his advocate, and every petition shall (unless the High Court otherwise directs) be accompanied by a copy of the judgment or order appealed against.

(2) A petition of appeal shall be signed, if the appellant is not represented by an advocate, by the appellant, and, if the appellant is represented by an advocate, by the advocate, and shall contain particulars of the matters of law or fact in regard to which the subordinate court appealed from is alleged to have erred, and shall specify an address at which notices or documents connected with the appeal may be served on the appellant or, as the case may be, on his advocate; and the appellant shall not be permitted, at the hearing of the appeal, to rely on a ground of appeal other than those set out in the petition of appeal:

Provided that—

- (i) subject to the provisions of paragraph (ii), where, within five days of the date of the judgment or order appealed against, the appellant or his advocate has applied to the subordinate court which passed the judgment or made the order for a copy of the record of the proceedings before that court, and where the appeal is entered within the period of limitation prescribed by section 349 but before receipt by the appellant or his advocate of the copy of the record, the petition of appeal may be amended on notice in writing to the Registrar of the High Court and to the Director of Public Prosecutions and without leave of the High Court, within seven days of the receipt by the appellant or his advocate of the copy of the record applied for;
- (ii) the provisions of paragraph (i) shall not apply where the petition of appeal is signed by an advocate who represented the appellant in the proceedings before the subordinate court appealed from;
- (iii) where a copy of the record of the proceedings before the subordinate court appealed from is applied for by the appellant or his advocate, the date of the receipt thereof by the appellant or his advocate shall be certified to the High Court by the subordinate court, and shall for the purposes of this subsection be deemed to be—
 - (a) if the copy of the record is delivered otherwise than by post, the date of delivery; and
 - (b) if the copy of the record is delivered by post, the date on which it is shown, on an advice of the delivery of a registered postal article issued under regulation 37(3) of the East African Postal Regulations, or any provision of law amending or replacing that regulation, to have been delivered,

and no such copy of a record shall be delivered by post otherwise than by registered post;

- (iv) save as provided in paragraph (i), a petition of appeal may only be amended with the leave of the High Court and on such terms and conditions, whether as to costs or otherwise, as the High Court may see fit to impose;
- (v) notice in writing of an application for leave to amend a petition of appeal shall be given to the Registrar of the High Court and to the Attorney-General not less than three clear days, or such

shorter period as the High Court may in any particular case allow, before the application is made; and an application for leave to amend a petition of appeal shall be made either at the hearing of the appeal or, if made previously, by way of motion in open court.

Section 354 of Cap. 75 which it is proposed to amend—

354. Powers of High Court

(1) At the hearing of the appeal the appellant or his advocate may address the court in support of the particulars set out in the petition of appeal and the respondent or his advocate may then address the court.

(2) The court may invite the appellant or his advocate to reply upon any matters of law or fact raised by the respondent or his advocate in his address.

(3) The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may—

(a) in an appeal from a conviction—

- (i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction; or
- (ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence; or
- (iii) with or without a reduction or increase and with or without altering the finding, alter the nature of the sentence;

(b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;

(bb) in an appeal from an acquittal, an appeal from an order refusing to admit a complaint or formal charge or an appeal from an order dismissing a charge, hear and determine the matter of law and thereupon reverse, affirm or vary the determination of the subordinate court, or remit the matter with the opinion of the High court thereon to the subordinate court for determination, whether by way of rehearing or otherwise, with such directions as the High Court may think necessary, and make such other order in relation to the matter, including an order as to costs, as High Court may think fit;

(c) in an appeal from an acquittal, an appeal from an order refusing to admit a complaint or formal charge or an appeal from an order dismissing a charge, hear and determine the matter of law and thereupon reverse, affirm or vary the determination of the subordinate court, or remit the matter with the opinion of the High Court thereon to the subordinate court for determination, whether by way of re-hearing or otherwise, with such directions as the High Court may think necessary, and make such other order in relation to the matter, including an order as to costs, as the High Court may think fit;

(d) in an appeal from any other order, alter or reverse the order,

and in any case may make any amendment or any consequential or incidental order that may appear just and proper.

(4) Subject to subsection (5), an appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it, at the hearing of the appeal:

Provided that where the appeal is on some ground involving a question of law alone, he shall not be entitled to be present except with the leave of the High Court.

(5) The right of an appellant who is in custody to be present at the hearing of the appeal shall be subject to his paying all expenses incidental to his transfer to and from the place where the court sits for the determination of the appeal:

Provided that the court may direct that the appellant be brought before the court in a case where in the opinion of the court his presence is advisable for the due determination of the appeal, in which case the expenses shall be defrayed out of moneys provided by Parliament.

(6) Nothing in subsection (1) shall empower the High Court to impose a greater sentence than might have been imposed by the court which tried the case.

(7) Deleted by Act No. 10 of 1969, Sch.

Section 356 of Cap. 75 which it is proposed to amend—

356. Bail and stay of execution pending the entering of an appeal

(1) The High Court, or the subordinate court which has convicted or sentenced a person, may grant bail or may stay execution on a sentence or order pending the entering of an appeal, on such terms as to security for the payment of money or the performance or non-performance of any act

or the suffering of any punishment ordered by or in the sentence or order as may seem reasonable to the High Court or the subordinate court.

(2) If the person in whose favour bail or a stay of execution is granted under this section is ultimately liable to a sentence of imprisonment, the time during which the person has been released on bail, or during which the execution was stayed, shall be excluded in computing the term of his sentence, unless the High Court, or failing that court the subordinate court which convicted and sentenced the person, otherwise orders.

Section 358 of Cap. 75 which it is proposed to amend—

358. Power to take further evidence

(1) In dealing with an appeal from a subordinate court, the High Court, if it thinks additional evidence is necessary, shall record its reasons, and may either take such evidence itself or direct it to be taken by a subordinate court.

(2) When the additional evidence is taken by a subordinate court, that court shall certify the evidence to the High Court, which shall thereupon proceed to dispose of the appeal.

(3) Unless the High Court otherwise directs, the accused or his advocate shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a subordinate court.

Section 359 of Cap. 75 which it is proposed to amend—

359. Number of judges on an appeal

(1) Appeals from subordinate courts shall be heard by one judge of the High Court, except when in any particular case the Chief Justice, or a judge to whom the Chief Justice has given authority in writing, directs that the appeal be heard by one judge of the High Court.

(2) If on the hearing of an appeal the court is equally divided in opinion the appeal shall be reheard before three judges.

Section 360 of Cap. 75 which it is proposed to amend—

360. Abatement of appeals

Every appeal from a subordinate court (except an appeal from a sentence of a fine) shall finally abate on the death of the appellant.

Section 361 of Cap. 75 which it is proposed to amend—

361. Second appeals

(1) A party to an appeal from a subordinate court may, subject to subsection (8), appeal against a decision of the High Court in its appellate

jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section—

- (a) on a matter of fact, and severity of sentence is a matter of fact; or
- (b) against sentence, except where a sentence has been enhanced by the High Court, unless the subordinate court had no power under section 7 to pass that sentence.

(2) On any such appeal, the Court of Appeal may, if it thinks that the judgment of the subordinate court or of the first appellate court should be set aside or varied on the ground of a wrong decision on a question of law, make any order which the subordinate court or the first appellate court could have made, or may remit the case, together with its judgment or order thereon, to the first appellate court or to the subordinate court for determination, whether or not by way of rehearing, with such directions as the Court of Appeal may think necessary.

(3) If it appears to the Court of Appeal that a party to an appeal, though not properly convicted on some count, has been properly convicted on some other count, the court may, in respect of the count on which it considers that the appellant has been properly convicted, either affirm the sentence passed by the subordinate court or by the first appellate court or pass such other sentence (whether more or less severe) in substitution therefor as it thinks proper.

(4) Where a party to an appeal has been convicted of an offence and the subordinate court or the first appellate court could lawfully have found him guilty of some other offence, and on the finding of the subordinate court or of the first appellate court it appears to the Court of Appeal that the court must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the subordinate court or by the first appellate court a conviction of guilty of that other offence, and pass such sentence in substitution for the sentence passed by the subordinate court or by the first appellate court as may be warranted in law for that other offence.

(5) On any appeal brought under this section, the Court of Appeal may, notwithstanding that it may be of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has in fact occurred.

(6) Where an appeal under this section is pending, a judge of the High Court may grant bail to a convicted person who is a party to the appeal.

(7) For the purposes of this section, an order made by the High Court in the exercise of its revisionary jurisdiction or a decision of the High Court on a case stated shall be deemed to be a decision of the High Court in its appellate jurisdiction.

(8) This section shall not apply to—

(a) a decision of the High Court in its appellate Jurisdiction exercised under section 347(1)(b); or

(b) a refusal by the High Court to admit an appeal out of time under section 349,

and any such decision or refusal shall be final.

Section 362 of Cap. 75 which it is proposed to amend—

362. Power of High Court to call for records

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

Section 363 of Cap. 75 which it is proposed to amend—

363. Subordinate court may call for records of inferior court

(1) A subordinate court of the first class may call for and examine the record of any criminal proceedings of a subordinate court of a lower class than it and established within its local limits of jurisdiction, for the purpose of satisfying itself as to the legality, correctness or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings.

(2) If a subordinate court acting under subsection (1) considers that a finding, sentence or order of the court of lower class is illegal or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court.

Section 364 of Cap. 75 which it is proposed to amend—

364. Powers of High Court on revision

(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

- (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
- (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
- (c) in proceedings under section 203 or 296(2) of the Panel Code, the Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organized Crimes Act, the Proceeds of Crime and Anti-Money Laundering Act, the Sexual Offences Act and the Counter-Trafficking in Persons Act, where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

Section 366 of Cap. 75 which it is proposed to amend—

366. Number of judges in revision

All proceedings before the High Court in the exercise of its revisional jurisdiction may be heard and any judgment or order thereon may be made or passed by one judge:

Provided that when the court is composed of more than one judge and the court is equally divided in opinion, the sentence or order of the subordinate court shall be upheld.

Section 385 of Cap. 75 which it is proposed to amend—

385. Magistrates empowered to hold inquests

A magistrate empowered to hold a subordinate court of the first, or second class, and a magistrate specially empowered in that behalf by the Chief Justice, shall be empowered to hold inquests.

Section 386 of Cap. 75 which it is proposed to amend—

386. Police to inquire and report on suicide, etc.

(1) The officer in charge of a police station, or any other officer specially empowered by the Minister in that behalf, on receiving information that a person—

- (a) has committed suicide;
- (b) has been killed by another or by an accident;
- (c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence; or
- (d) is missing and believed to be dead;

shall immediately give information thereof to the nearest magistrate empowered to hold inquests, and, unless otherwise directed by any rule made by the Minister, shall proceed to the place where the body of the deceased person is, and shall there make an investigation and draw up a report on the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), the marks appear to have been inflicted; and the report shall in the case of paragraph (a), (b) or (c); be forwarded forthwith to the nearest magistrate empowered to hold inquests; and in the case of paragraph (d) shall immediately send to the Director of Public Prosecutions through the Inspector-General of the National Police Service as full a report as possible together with details of all supporting evidence relating to the circumstances surrounding the disappearance and the grounds upon which the death of that person is presumed to have taken place.

(2) When, except in the case of a missing person believed to be dead there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient to do so, he shall, subject to any rule made by the Minister, forward the body, with a view to its being examined, to the nearest medical officer or other person appointed

by the Minister in that behalf, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render the examination useless.

(3) When the body of a person is found or a person has committed suicide or has been killed by another or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, a person finding the body or becoming aware of the death shall immediately give information thereof to the nearest administrative officer or police officer.

Section 391 of Cap. 75 which it is proposed to amend—

391. Shorthand notes of proceedings

Shorthand notes may be taken of the proceedings at the trial of a person before the High Court or a subordinate court, and a transcript of those notes shall be made if the court so directs, and the transcript shall for all purposes be deemed to be the official record of the proceedings at the trial.

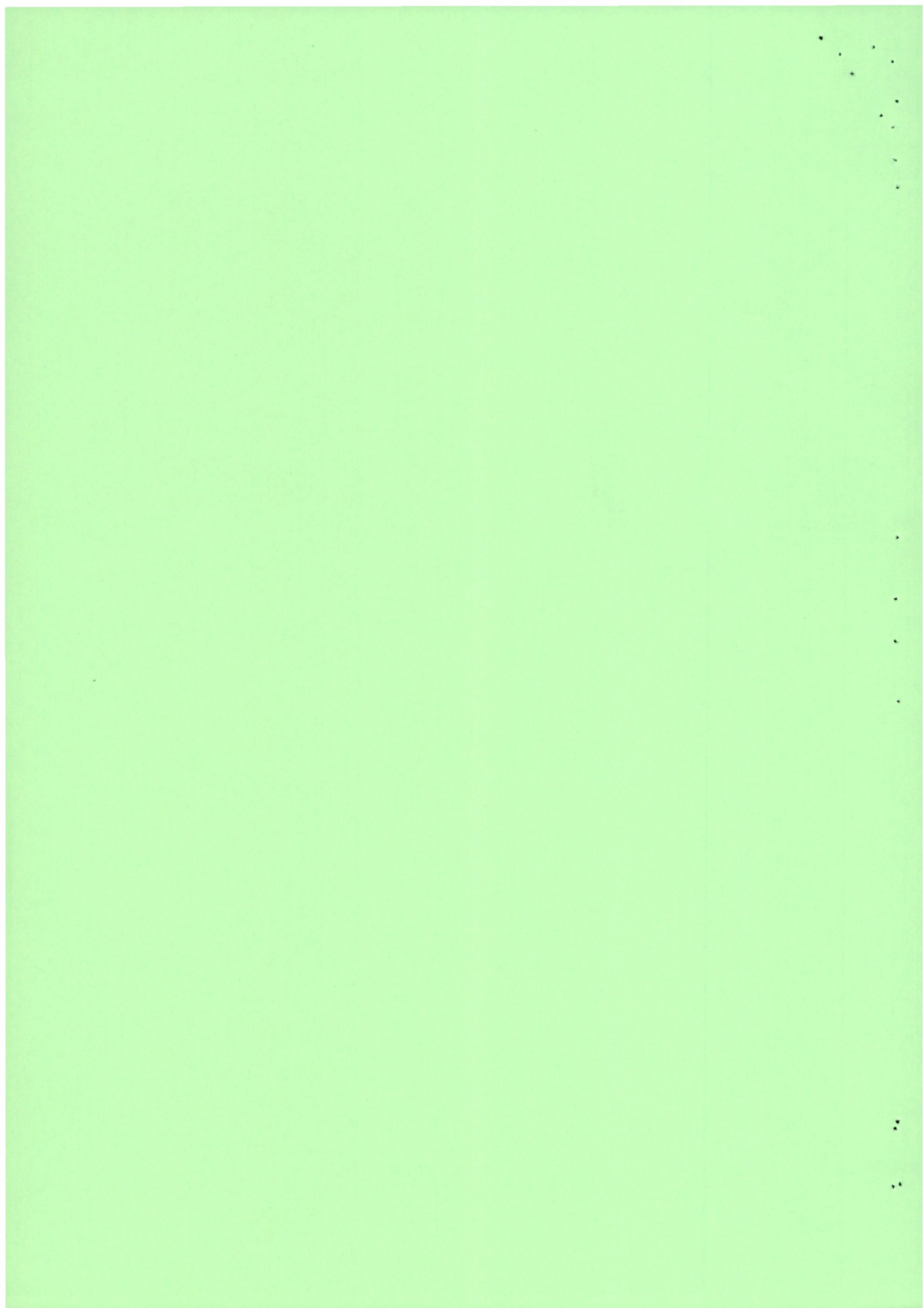
Section 394 of Cap. 75 which it is proposed to amend—

394. Expenses of assessors, witnesses, etc.

Subject to any rules which may be made by the Minister, any court may order payment on the part of the Government of the reasonable expenses of a complainant or witness attending before the court for the purposes of an inquiry, trial or other proceeding under this Code.

Annexure **4**

Advertisement inviting the public to submit memoranda on the Bill





REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT- FIFTH SESSION (2026)
THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION
AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

- (1) THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 11 OF 2026);
- (2) THE PENAL CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2026);
- (3) THE TRAFFIC (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 14 OF 2026)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Criminal procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026), the Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026), and the Traffic (Amendment) Bill (National Assembly Bill No. 14 of 2026) were read a First Time on 16th April, 2026 and referred to the Departmental Committee on Justice and Legal Affairs and the Departmental Committee on Transport & Infrastructure, for consideration and reporting back to the House;

IT IS NOTIFIED that—

(1) The Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026) is a Bill sponsored by the Hon. George Gitonga Murugara, MP, that is informed by criminal justice reform proposals submitted to Parliament by the National Council on the Administration of Justice (NCAJ). The Bill seeks to—

- (a) align the Act with the Constitution, particularly Articles 27, 28, 29, 31, 39, 48, 49, 50, and 51, which protect equality, dignity, liberty, privacy, property, access to justice, fair trial rights, and the rights of arrested and detained persons, respectively;
- (b) review provisions relating to transfer of cases between magistrates, suspended sentences, entering of nolle prosequi, official court languages, forfeiture of property, disposal of forfeited goods, and release of exhibits;
- (c) introduce special procedural safeguards for persons with mental illness and aligns the Act with the Mental Health Act, Cap. 248; and
- (d) enhance procedural efficiency, professionalism, accountability, and the effective functioning of the criminal justice system.

(2) The Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026) is a Bill sponsored by the Hon. George Gitonga Murugara, MP, that is informed by criminal justice reform proposals submitted to Parliament by the National Council on the Administration of Justice (NCAJ). The Bill seeks to—

- (a) align the Act with the Constitution, relevant statutes and court pronouncements on the unconstitutionality of mandatory death sentences and the definition and punishment for the offences of "robbery" and "robbery with violence";
- (b) incorporate constitutional principles relating to sentencing and freedom of expression in the Act;
- (c) harmonize terminology concerning persons with mental illness with the Mental Health Act, Cap. 248;
- (d) align provisions on children in conflict with the law with the Children Act, 2022;
- (e) delete obsolete references to detention camps following the repeal of the Detention Camps Act by the Community Service Orders Act, No. 10 of 1998; and
- (f) shift the burden of proof for the offences of incitement to violence and disobedience to the prosecution, in conformity with general principles of criminal law.

(3) The Traffic (Amendment) Bill (National Assembly Bill No. 14 of 2026) is a Bill sponsored by the Hon. Robert Ngũgĩ Basik, MP, that seeks to amend the Traffic Act, Cap. 403 to protect persons from being unreasonably deprived of their property through detention vehicles and motorcycles to enforce the provisions of the current section 107 of the Act.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and National Assembly Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the relevant Departmental Committees listed below—

BILL	COMMITTEE
1. The Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026)	Departmental Committee on Justice and Legal Affairs
2. The Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026)	
3. The Traffic (Amendment) Bill (National Assembly Bill No. 14 of 2026)	Departmental Committee on Transport and Infrastructure

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

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to cas@parliament.go.ke to be received on or before Monday, 4th May, 2026 at 5.00 p.m.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
18th April, 2026

"For the Welfare of Society and the just Government of the People"

COUNTY GOVERNMENT OF MERU

Website: www.assembly.meru.go.ke
Email: finance.department@meru.go.ke



Meru County Headquarters
P.O. Box 120-80200
MERU

DEPARTMENT OF FINANCE, ECONOMIC PLANNING AND ICT

**PUBLIC PARTICIPATION ON PREPARATION OF COUNTY BUDGET
ESTIMATES (FY2026/27) AND 2027/28-2028/29 MEDIUM-TERM
EXPENDITURE FRAMEWORK (MTEF)**

Pursuant to the provisions of Article 220(2) of the constitution of Kenya as read-together with Sections 129 & 225 (2) of the Public Finance Management Act (PFM), 2012. The County Government of Meru is in the process of formulating the Budget Estimates for the Financial Year 2026/2027 and 2027/2028-2028/2029 Medium-Term Expenditure Framework, and therefore seeks to take into account the views of the public and all stakeholders.

In regard to the above, County Executive of Meru wish to invite members of the public, civil society organizations, faith-based organizations, Youth, Women, PWDs, private sector practitioners and all other interested persons and stakeholders to participate in the process by submitting their views on the proposed estimates and the medium-term expenditure framework during public fora as provided in the schedule below:-

	WARD	VENUE	DATE	STARTING TIME
1	BUURI EAST KIDIRICHIA KIIRUA NAARI RUIRI RWARERA	KIIRUA CATHOLIC CHURCH HALL	29th APRIL, 2026	10:00 am
2	BUURI WEST TIMAU KISIMA	WRUA OFFICES	29th APRIL, 2026	10:00 am
3	TIGANIA CENTRAL THANGATHA MIKINDURI KIGUCHWA	ST MASSIMO CATHOLIC CHURCH HALL	29th APRIL, 2026	10:00 am
4	TIGANIA EAST MUTHARA SPECIAL KARAMA	MURIRI DCC HALL	29th APRIL, 2026	10:00 am
5	TIGANIA WEST KIANJAI NKOMO ATHWANA AKITHII MBEU	URRU SOCIAL HALL	29th APRIL, 2026	10:00 am
6	MIENTI NORTH MUNICIPALITY NTIMA EAST NTIMA WEST	MCK MWITARIA CHURCH HALL	29th APRIL, 2026	10:00 am
7	MIENTI CENTRAL ABOTHUGUCHI WEST ABOTHUGUCHI CENTRAL KIAGU MWANGATHIA	ST IMMACULATE CATHOLIC CHURCH- GATIMBI	29th APRIL, 2026	10:00 am
8	MIENTI EAST NYAKI EAST NYAKI WEST	MCK THUURA CHURCH GROUND	29th APRIL, 2026	10:00 am
9	IGEMBE SOUTH AKACHU KANUNI MAUA ATHIRU GAITI KIEGOI ANTUBOCHIU	IGEMBE SOUTH SUB COUNTY HQ HALL	30th APRIL, 2026	10:00 am
10	IGEMBE NORTH ANTUAMBUI NTUNENE	LAARE SOCIAL HALL	30th APRIL, 2026	10:00 am
11	KIENGU IGEMBE EAST ATHIRU RUUJINE	MCK KIENGU CHURCH HALL	30th APRIL, 2026	10:00 am
12	MUTUATI AMWATHI NAATHU ANTUBETWE KIONGO	HOREB CHURCH GROUNDS	30th APRIL, 2026	10:00 am
13	IGEMBE CENTRAL KANGETA AKIRANG'ONDU NIIJA	KANGETA MULTIPURPOSE HALL	30th APRIL, 2026	10:00 am
14	ABOGETA ABOGETA EAST ABOGETA WEST	KANYAKINE DCC HALL	30th APRIL, 2026	10:00 am
15	IGOJI IGOJI EAST IGOJI WEST	IGOJI CATHOLIC SOCIAL HALL	30th APRIL, 2026	10:00 am
16	NKUJENE MITUNGUU MITUNGUU	NKUBU SOCIAL HALL	30th APRIL, 2026	10:00 am

Interested members of the public and stakeholders are also invited to submit their views through written memoranda to the County Treasury delivered either through their respective Sub-County, ward Administrator's office or hand delivered to the Office of the CECM, Finance, Economic Planning and ICT on or before 30th April, 2026.

Memoranda may also be submitted via email address budget.finance@meru.go.ke

CPA Monica Mathenge Kaithori,

CECM Finance, Economic Planning & ICT.

Politics Zoning 'only to apply to President's party'

Oburu: ODM-UDA talks are not at risk

Leader moves to calm fears of betrayal by the ruling outfit

BY RUSHDIE OUDIA

Orange Democratic Movement (ODM) leader Oburu Oginga yesterday suggested that the zoning arrangement the party seeks will only apply to President William Ruto's United Democratic Alliance (UDA), leaving a window for another Kenya Kwanza coalition outfit to field candidates in the 2027 General Election.

Dr Oginga dismissed reports of ODM-UDA talks collapsing, saying formal negotiations have not even begun.

He added that no team has been formed to craft a pre-election agreement with the President's side.

After a seven-hour charged meeting by the party's decision-making organ in Nairobi on Thursday, the ODM leadership said the party had suspended coalition talks to re-focus on popularising it ahead of the General Election.

The meeting was chaired by Dr Oginga, with sources describing it as tense as officials expressed frustration over what they termed a coordinated scheme to undermine the party.

Dr Oginga, ODM Chairperson Gladys Wanga and Deputy Party Leader Simba Arati were tasked with calling a meeting with the President to resolve the issues.

"Our focus is on ODM. We are not going to engage in coalition talks with people who have no respect for us and ODM," an official said after the meeting.

Dr Oginga, however, yesterday said negotiations have not begun. "No talks have stalled. We cannot stop what has not started. There is no issue we are putting brakes to," Dr Oginga said in Kisumu.

Dr Oginga spoke at a hotel after meeting religious leaders from Nyanza.

The clergy said they had come to pray for him and pledge their support for ODM.

The zoning controversy has dominated political chatter in recent days, especially during Dr Oginga's trip to the United Kingdom, exposing cracks and unease in the 20-year-old party that was founded by Raila Odinga who died in October last year.

Odinga was Dr Oginga's younger brother.

"I want to put this issue of zoning to rest. There is absolutely nothing wrong with zoning. As ODM, we are not concerned with parties we are not negotiating with. Our focus is UDA and talks with it is what matters," Dr Oginga said.



Orange Democratic Movement leader Oburu Oginga addresses journalists in Kisumu yesterday. ALEX OOHAMBO/NATION

He added that the matter would be among the items on the table when negotiations with UDA begin.

"Zoning is one of the many subjects ODM will discuss with UDA. It is among the agendas being pursued by our technical team, which will be made public soon," he said.

The party leader, however, defended zoning, insisting that ODM must protect its strongholds.

"Anybody who thinks we should not protect our territory is wrong. If they don't want to protect their seats and fear they will lose in ODM, let them join other parties. We are in a democracy and we do not bar anyone from shifting to another party or joining ours," Dr Oginga said.

He added that a majority of National Assembly and Senate members, governors and ward representatives in Nyanza, West-

ern Coast and Nairobi were elected on ODM tickets.

"We are not ready to surrender these electoral seats to any other party and will compete fiercely. Our stand is that we should not compete with people we are going into partnership with," the ODM chief said.

He, however, advised ODM elected leaders not to sit pretty because of zoning.

Dr Oginga said hopefuls should apply for the seats they are interested in, adding that the party nominations would be free and fair.

"Do not sleep, assuming that the positions are automatically yours. We have opened the ODM portal for hopefuls from Member of County Assembly all the way to the presidency to apply," he added.

Dr Oginga also criticised UDA leaders undermining "the strongest party in Africa".

He singled out Senate Speaker Amason Kingi and UDA Secretary-General Hassan Omar for saying ODM is dead.

"I am disappointed with my Speaker and the UDA Secretary-General who are ungrateful to the party that made them who they are. I respect the President but he should discipline officials disrespecting ODM," he said.

The ODM boss acknowledged the efforts by the government in addressing the fuel crisis, saying the reduction of VAT on petroleum products is a step in the right direction, but not enough.

"I will still push the government so that Kenyans get more relief at the pump," he said.

roudia@ke.nationmedia.com



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - FIFTH SESSION (2026)
THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118(1)(b) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

- (1) THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 11 OF 2026);
- (2) THE PENAL CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2026)
- (3) THE TRAFFIC (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 14 OF 2026)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026), the Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026), and the Traffic (Amendment) Bill (National Assembly Bill No. 14 of 2026) were read a First Time on 16th April, 2026 and referred to the Departmental Committee on Justice and Legal Affairs and the Departmental Committee on Transport & Infrastructure, for consideration and reporting back to the House;

IT IS NOTIFIED that—

(1) The Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026) is a Bill sponsored by the Hon. George Gitonga Murugara, MP, that is informed by criminal justice reform proposals submitted to Parliament by the National Council on the Administration of Justice (NCAJ). The Bill seeks to—

- (a) align the Act with the Constitution, particularly Articles 27, 28, 29, 31, 39, 48, 49, 50, and 51, which protect equality, dignity, liberty, privacy, property, access to justice, fair trial rights, and the rights of arrested and detained persons, respectively;
- (b) review provisions relating to transfer of cases between magistrates, suspended sentences, entering of nolle prosequi, official court languages, sufficient evidence, disposal of forfeited goods, and release of exhibits;
- (c) introduce special procedural safeguards for persons with mental illness and aligns the Act with the Mental Health Act, Cap. 248; and
- (d) enhance procedural efficiency, professionalism, accountability, and the effective functioning of the criminal justice system.

(2) The Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026) is a Bill sponsored by the Hon. George Gitonga Murugara, MP, that is informed by criminal justice reform proposals submitted to Parliament by the National Council on the Administration of Justice (NCAJ). The Bill seeks to—

- (a) align the Act with the Constitution, relevant statutes and court pronouncements on the unconstitutionality of mandatory death sentences and the definition and punishment for the offences of "robbery" and "robbery with violence";
- (b) incorporate constitutional principles relating to sentencing and freedom of expression in the Act;
- (c) harmonize terminology concerning persons with mental illness with the Mental Health Act, Cap. 248;
- (d) align provisions on children in conflict with the law with the Children's Act, 2022;
- (e) delete obsolete references to detention camps following the repeal of the Detention Camps Act by the Community Service Orders Act, No. 10 of 2022; and
- (f) shift the burden of proof for the offences of incitement to violence and disobedience to the prosecution, in conformity with general principles of criminal law.

(3) The Traffic (Amendment) Bill (National Assembly Bill No. 14 of 2026) is a Bill sponsored by the Hon. Robert Ngul Basili, MP, that seeks to amend the Traffic Act, 1999, to protect persons from being unreasonably deprived of their property through detention vehicles and motorcycles to enforce the provisions of the current section 107 of the Act.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and National Assembly Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the relevant Departmental Committees below—

BILL		
1.	The Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026)	Departmental Committee on Justice and Legal Affairs
2.	The Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026)	
3.	The Traffic (Amendment) Bill (National Assembly Bill No. 14 of 2026)	Departmental Committee on Transport and Infrastructure

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Building, and on www.parliament.go.ke/the-national-assembly/house-business-affairs.

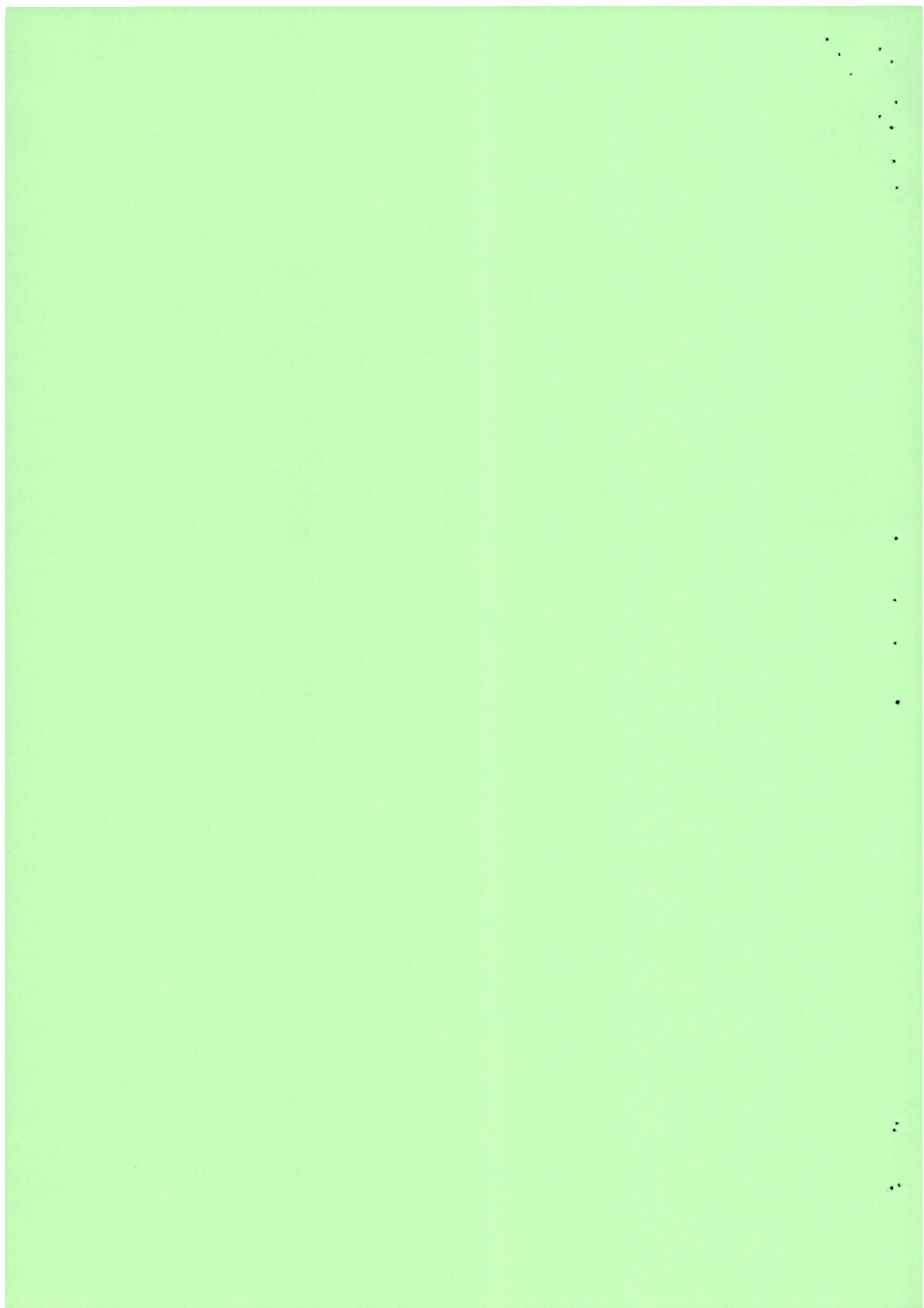
The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to cas@parliament.go.ke to be received on or before Monday, 4th May, 2026 at 5.00 p.m.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
18th April, 2026

"For the Welfare of Society and the Just Governance"

Annexure **5**

Letter from the Clerk of the National Assembly inviting key stakeholders to a meeting to submit views on the Bill





**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/2026/050

24th June, 2026

Hon. Winfridah Boyani Mokaya, CBS

Chief Registrar of the Judiciary / Secretary
Judicial Service Commission
Supreme Court Building
NAIROBI

Dr. Raymond Omollo, PhD, CBS

Principal Secretary
State Department for Internal Security and National Administration
Ministry of Interior and National Administration
Harambee House, Harambee Avenue
NAIROBI

Dr. Salome W. Muhia-Beacco, CBS

Principal Secretary
State Department for Correctional Services
Ministry of Interior and National Administration
Teleposta Towers
NAIROBI

Hon. Shadrack John Mose, CBS

Solicitor General
Office of the Attorney-General and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Hon. Judith Nayiai Ramaita-Pareno

Principal Secretary
State Department for Justice, Human Rights & Constitutional Affairs
Office of the Attorney-General and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Mr. Noordin M. Haji, MGH, CBS, OGW, 'nsc' (AU)

Director General
National Intelligence Service
NAIROBI

Mr. Renson Mulele Ingonga, OGW

Director of Public Prosecutions
ODPP House, Ragati Road, Upper Hill
NAIROBI

Mr. Mohamed I. Amin, CBS, OGW, ndc(K)

Director

Directorate of Criminal Investigations

NAIROBI

Mr. James Nombi

Ag. Commission Secretary / CEO

Kenya Law Reform Commission

Reinsurance Plaza, 3rd Floor, Taifa Road

NAIROBI

Ms. Naisiae Paloshe Tobiko

Commission Secretary / CEO

Commission on Administrative Justice

West End Towers, 2nd Floor

NAIROBI

Ms. Florence W. Muturi

Chief Executive Officer

Law Society of Kenya (LSK)

Lavington, Opposite Valley Arcade, Gitanga Road

NAIROBI

Mr. Joseph Ndiku

Ag. Commission Secretary / CEO

Kenya National Commission on Human Rights

1st Floor, CVS Plaza, Lenana Road

NAIROBI

Ms. Jedidah W. Waruhiu, SC

Chief Executive Officer

Witness Protection Agency

Liaison Office, Milimani Law Courts, 4th Floor, Room 413

NAIROBI

Dr. Moses Marang'a

Executive Director

National Council for the Administration of Justice (NCAJ)

Mayfair Center, 5th Floor

NAIROBI

Ms. Sophie Kaibiria

Executive Director

FIDA Kenya

Amboseli Road, Off Gitanga Road

NAIROBI

Mr. Abdinoor Sheikh Mohamed

Chief Executive Officer

National Council for Children's Services (NCCS)

Bishops Road, Social Security House, Block C, 4th Floor

NAIROBI

Dr. Wambua Kituku
Executive Director
Kituo Cha Sheria
Ole Odume Rd, Off Argwings Kodhek Road
NAIROBI

Mr. Allan Maleche
Executive Director
KELIN
Karen C, Kuwinda Lane, Off Langata Road
NAIROBI

Ms. Agnes Rogo
Managing Attorney
Women's Link Worldwide
Karen C, Kuwinda Lane, Off Langata Road
NAIROBI

Dear

**RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE CRIMINAL
PROCEDURE CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL
NO. 11 OF 2026) AND THE PENAL CODE (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 12 OF 2026)**

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.'

As you are aware, the Criminal Procedure Code (Amendment) Bill (*National Assembly Bill No. 11 of 2026*) is a Bill sponsored by the Hon. George Gitonga Murugara, MP, that seeks to:

- (a) align the Act with the Constitution, particularly Articles 27, 28, 29, 31, 39, 48, 49, 50, and 51, which protect equality, dignity, liberty, privacy, property, access to justice, fair trial rights, and the rights of arrested and detained persons, respectively;
- (b) review provisions relating to transfer of cases between magistrates, suspended sentences, entering of nolle prosequi, official court languages, forfeiture of property, disposal of forfeited goods, and release of exhibits;
- (c) introduce special procedural safeguards for persons with mental illness and aligns the Act with the Mental Health Act, Cap. 248; and
- (d) enhance procedural efficiency, professionalism, accountability, and the effective functioning of the criminal justice system.

Similarly, the Penal Code (Amendment) Bill (*National Assembly Bill No. 12 of 2026*) is a Bill sponsored by the Hon. George Gitonga Murugara, MP, that seeks to:

- (a) align the Act with the Constitution, relevant statutes and court pronouncements on the unconstitutionality of mandatory death sentences and the definition and punishment for the offences of "robbery" and "robbery with violence";
- (b) incorporate constitutional principles relating to sentencing and freedom of expression in the Act;
- (c) harmonize terminology concerning persons with mental illness with the Mental Health Act, Cap. 248;
- (d) align provisions on children in conflict with the law with the Children Act, 2022;
- (e) delete obsolete references to detention camps following the repeal of the Detention Camps Act by the Community Service Orders Act, No. 10 of 1998; and
- (f) shift the burden of proof for the offences of incitement to violence and disobedience to the prosecution, in conformity with general principles of criminal law.

The two Bills are informed by criminal justice reform proposals submitted to Parliament by the National Council on the Administration of Justice (NCAJ).

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 business of Parliament and its Committees. Due to the great public interest in the Bills, the Committee resolved to meet critical stakeholders to make submissions on the two Bills.

In this regard, the Committee invites you, or your representatives, for a meeting on **Thursday, 2nd July 2026, at 10:00 am** at the **Committee Room 24, 5th Floor, Bunge Tower**. The agenda of the meeting is to receive your views on the two Bills.

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

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

Our liaison officers on this subject are Mr. Abenayo Wasike, H.O.D., who may be contacted on tel. no. 0721352053 or email abenayo.makokha@parliament.go.ke or Mr. Ahmed Salim Abdalla, Lead Clerk, tel. no. 0710204056 or email: ahmed.salim@parliament.go.ke.

Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: - **Hon. Dorcas Agik Oduor, SC, OGW, EBS**
The Attorney General
The State Law Office and the Department of Justice
Sheria House, Harambee Avenue
NAIROBI

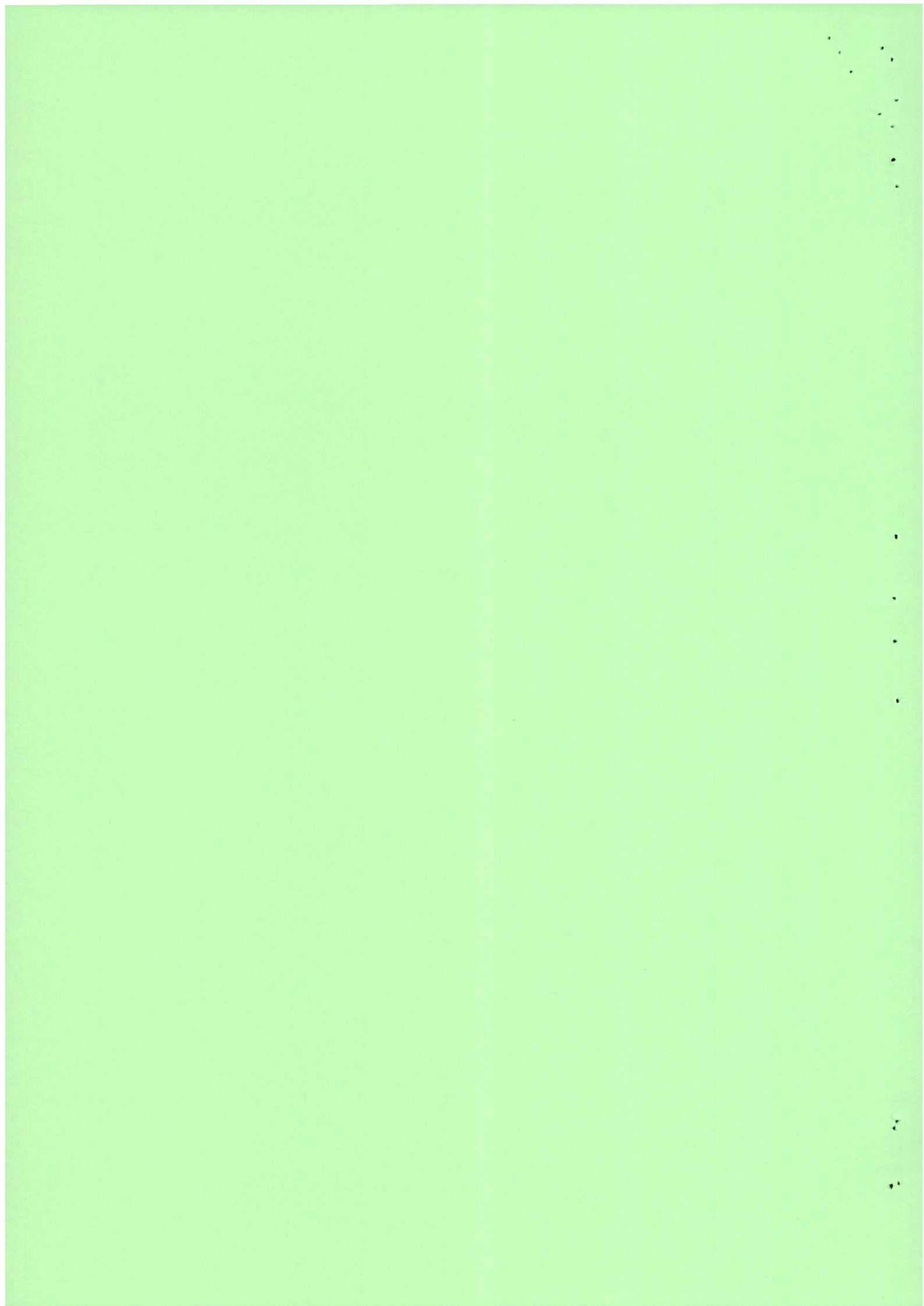
Hon. Onesimus Kipchumba Murkomen, EGH
Cabinet Secretary
Ministry of Interior and National Administration
NAIROBI

CPA. Dr. Aurelia Rono
Principal Secretary
The State Department for Parliamentary Affairs
Office of the Prime Cabinet Secretary
Kenya Railways, Block A, Haile Selassie Avenue
NAIROBI



Annexure **6**

Memoranda by Stakeholders





KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

MEMORANDUM ON

THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL 2026

SUBMITTED TO

CLERK OF THE NATIONAL ASSEMBLY

DATED: 1ST JULY 2026

Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lenana Road
P.O. Box 74359-00200
NAIROBI, KENYA
Tel: 0726610159/0733780000
Website: www.knchr.org

A. INTRODUCTION

1. The Kenya National Commission on Human Rights (“KNCHR”) is an independent National Human Rights Institution established under **Article 59** of the Constitution with a broad mandate to promote a culture of respect for human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the KNCHR Act and the United Nations *Paris Principles* on the establishment and functioning of independent national human rights institutions commonly referred to as the Paris Principles and as such enjoys an “A” status accreditation.
2. The KNCHR under Article 249 of the Constitution has a mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the Constitution. One of the strategies pursued by the National Commission to secure observance of all state organs of democratic values and principles is through human rights monitoring, review of new and existing laws and policies, and the issuance of advisories informed by the KNCHR’s analysis.
3. The KNCHR welcomes the introduction of the Criminal Procedure Code (Amendment) Bill, 2026, which seeks to align the Criminal Procedure Code with the Constitution of Kenya, 2010, jurisprudence and other enabling provisions. The Bill expressly states that its object is to align criminal procedure with Articles 27, 28, 29, 31, 48, 49, 50 and 51 of the Constitution, while also reforming criminal justice matters such as nolle prosequi, transfer of cases, forfeiture of property and making provision for persons with mental illness.
4. In this regard, the KNCHR submits its comments on the Criminal Procedure Code (Amendment) Bill 2026 sponsored by the Hon. George Gitonga Murugara, MP. This advisory has three parts; Section A covers preliminary introduction, Section B provides General observations and recommendations, while specific comments/observations on particular clauses of the Criminal Procedure Code (Amendment) Bill 2026 are detailed in Section C.

B. GENERAL COMMENTS

5. The National Commission acknowledges that Kenya is bound by the Constitution of Kenya, 2010, and is a party to key international treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights (ACHPR). These instruments require the State to respect, protect, and fulfill human rights for all, including within the criminal justice system. Therefore, the Commission recognizes the importance of aligning the Criminal Procedure Code with the Constitution to realize a human rights-based legal framework.

6. The National Commission further notes the High Court decision in the case of *Kimaru & 17 Others v Attorney General*¹ the High Court held that confining persons with mental illness for an indeterminate period “at the President’s pleasure” violates the rights to equality, human dignity and a fair trial. As such, the Commission welcomes the Bill’s proposal to repeal and replace Sections 162 and 166 of the Criminal Procedure Code, aligning the Criminal Procedure Code with the provisions of Article 51 of the Constitution 2010 and the Mental Health Act CAP 248.
7. The National Commission further notes that, the High Court, in the case of *Baby ‘A’ (Suing through her Mother E.A) & another v Attorney General & 6 others*² recognized intersex children and persons as rights holders entitled to the full protection of the Constitution 2010 and placed obligations on the State to put in place laws, policies and guidelines for their recognition and protection. Thus, the Commission welcomes the Bill’s proposal, introducing a clear legal definition of intersex persons for purposes of the legislation, and further imposing a requirement requiring that any search of an intersex person, where reasonably practicable, be conducted by a person of the sex preferred by the intersex person, with strict regard to decency and dignity. The Commission emphasizes that incorporating these human rights safeguards especially in regard to intersex persons promotes the State duty to uphold the right to human dignity and protection from discrimination and degrading treatment.
8. The National Commission further recognizes that the presumption of innocence and the right to liberty are vital components towards a fair criminal justice system envisioned under Articles 49 to 51 of the Constitution 2010. The National Commission welcomes the proposals to repeal Sections 43 to 61 of the Criminal Procedure Code, as the measures stipulates therein have led to arrest and detention, based only on suspicion, undermining the presumption of innocence.

¹ Kimaru & 17 others v Attorney General & another; Kenya National Human Rights and Equality Commission (Interested Party) [2022] KEHC 114 (KLR)

² Baby ‘A’ (Suing through her Mother, EA) & another v Attorney General & 2 others; Kenya National Commission on Human Rights & 2 others (Interested Parties); Kenya Human Rights Commission (Amicus Curiae) [2014] KEHC 8495 (KLR)

C. SPECIFIC COMMENTS

No.	Clause & Title	Proposed Amendment	Rationale
1.	Clause 8 – Mode of searching an intersex person.	The Commission supports the introduction of Section 27A. The Commission recommends adding safeguards to provide that searches shall not be conducted for the sole purpose of determining the sex of an intersex person, that highly intrusive searches (including removal of clothing) are carried out only by qualified medical practitioners, and that all searches be conducted in privacy.	The introduction of Section 27A requires that searches of intersex persons be conducted, where reasonably practicable, by a person of the sex preferred by the intersex person with strict regard to decency, is a progressive step towards protecting the dignity of intersex persons. However, international standards such as the Yogyakarta Principles plus 10³ emphasise the right to bodily and mental integrity, autonomy and self-determination, and prohibit practices that use physical examinations to “verify” sex characteristics as these amount to degrading treatment. Furthermore, the Mandela Rules⁴ recommend that invasive searches be treated as medical procedures conducted by qualified personnel, and that all searches be carried out in private, respecting dignity and privacy.

³ The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity retrieved from <https://yogyakartaprinciples.org/principles-en/about-the-yogyakarta-principles/>

⁴ The Nelson Mandela Rules are the revised *United Nations Standard Minimum Rules for the Treatment of Prisoners*, adopted unanimously by the UN General Assembly in 2015 available at https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

No.	Clause & Title	Proposed Amendment	Rationale
2.	Clauses 10–29 <i>Repeal of sections 43–61A (Security for keeping the peace and good behaviour)</i>	The Commission welcomes the repeal of sections 43–61A and recommends that any future preventive measures under the CPC be designed strictly within constitutional limits of necessity, proportionality and presumption of innocence.	Sections 43–61A, enabled pre-emptive arrests and imposition of bonds based imply on suspicion that they might commit an offence, without proving any crime in court. This practice undermined liberty, freedom of movement and core fair-trial guarantees such as presumption of innocence and protection from arbitrary detention under Articles 24, 27, 29, 39, 49 and 50 of the Constitution. The National Commission supports the repeal recommends that any future preventive measures be firmly constrained by necessity, proportionality and due process, in line with a Human Rights-Based Approach and Kenya’s obligations to respect, protect and fulfil human rights.
3.	Clause 35 (Nolle prosequi)	The Commission supports the requirement that nolle prosequi be entered only with permission of the court and recommends that prosecutors and courts apply this power in strict conformity with Articles 157(8) and 157(11) of the Constitution 2010, including by providing written reasons demonstrating that discontinuance is in the public interest, promotes the administration of justice and does not amount to an abuse of legal process.	The Bill’s amendment of section 82, to require that a nolle prosequi be entered “with the permission of the court”, aligns statutory criminal procedure with Article 157(8), which provides that the Director of Public Prosecutions may discontinue criminal proceedings “with the permission of the court”. Furthermore, in the case of <i>Republic v Muturi</i> (Criminal Case E002 of 2025) ⁵ the court opined that pursuant to Article 157(11) of the Constitution 2010, and Section 25 of the ODPP Act, that the DPP is obligated to seek permission of the court to discontinue any criminal proceedings. This constitutional obligation overrides the DPP’s power to enter

⁵ *Republic v Muturi* (Criminal Case E002 of 2025) [2026] KEHC 6181 (KLR)

No.	Clause & Title	Proposed Amendment	Rationale
			nolle prosequi by dint of section 82(1) of the Criminal Procedure Code. Thus, the amendment aligns with court jurisprudence, strengthens the right to a fair hearing under Article 50, protects accused persons and victims from arbitrary discontinuance and aligns ODPP prosecutorial powers with Kenya's obligations under International Convention on Civil and Political Rights (ICCPR) and African Charter on Human and People's Rights (ACHPR) to avoid abuse of process and impunity.
4.	Clause 49 (Fitness to stand trial)	The Commission welcomes the inclusion of the new section 162 in the Bill on fitness to stand trial. However, the Commission recommends inclusion of a new provision that, when an accused is found unfit to stand trial under section 162, the court shall adopt the minimum necessary restriction compatible with safety and the health of the accused, in accordance with the Mental Health Act (Cap. 248).	The introduction of Section 162 is a positive reform that introduces a court-supervised process for determining fitness to stand trial, arranging mental health assessment and ordering inpatient or outpatient treatment where necessary. International standards, particularly the UN Convention on the Rights of Persons with Disabilities (CRPD) Articles 13 and 14, require that persons with disabilities enjoy effective access to justice, are not arbitrarily deprived of liberty on the basis of disability, and are treated in the least-restrictive environment compatible with safety, with regular judicial review of any deprivation of liberty. Incorporating an explicit minimum necessary restriction proviso will provide a clear statutory safeguard and aligns with the Mental Health Act CAP 248.

No.	Clause & Title	Proposed Amendment	Rationale
5.	Clause 50 (Special finding of not guilty) Clause 51 (repeal of Section 167).	The Commission welcomes the repeal of section 167 and the introduction of a new special finding procedure under section 166, with decisions now resting with the court. It further recommends that the Bill be amended to include an explicit proviso to Section 166 (5) that such committal shall be exclusively to a designated mental health facility and shall operate under the safeguards of the Mental Health Act CAP 248.	The repeal of section 167 and the introduction of the new section 166 represents an important shift away from the old “detention at the President’s pleasure” approach. In <i>Kimaru & 17 Others v Attorney General & Another; Kenya National Human Rights and Equality Commission (Interested Party)</i>, the High Court held that detaining persons with mental illness at the President’s pleasure is unconstitutional, and that such cases must be handled under judicial oversight and in line with constitutional rights. In the said judgment, the Court held that the provisions of the Criminal Procedure Code allowing “persons of unsound mind” to be held in prison at the president’s pleasure were inconsistent with multiple constitutional guarantees including Article 28, 29 and 51. Furthermore, the Mental Health Act (Cap 248) establishes a framework for designating and approving mental hospitals and mental health facilities, and for inspection and safeguards in the management of persons with mental illness. Explicitly requiring that committal under section 166 be strictly to a designated mental health facility, operating under Mental Health Act safeguards and review mechanisms, will prevent persons found not guilty by reason of mental illness from being committed to ordinary prisons, help ensure they receive appropriate treatment, and provide a clear statutory anchor.

No.	Clause & Title	Proposed Amendment	Rationale
6.	Clause 54 (Language of the Court)	The Commission welcomes the amendment to Section 198 of the Criminal Procedure Code. The National Commission recommends the introduction of a new provision to include a general obligation that courts shall ensure the provision of competent interpretation and necessary procedural accommodations so that accused persons, victims and witnesses, including persons with disabilities and those who do not understand Kiswahili or English, can effectively follow and participate in proceedings.	The proposed amendment contributes and aligns to the aspirations under Article 7(b) of the Constitution 2010 by recognising Kiswahili, English and Kenya Sign Language as languages of all courts. Currently persons with disabilities face significant barriers in accessing justice due to lack of qualified interpreters and absence of reasonable accommodation. The UN Convention on the Rights of Persons with Disabilities, in Article 13, requires States to ensure that persons with disabilities can effectively access justice, including by providing procedural and age-appropriate accommodations so they can take part fully in all legal proceedings, from investigations to trial. In Kenya, Article 50 of the Constitution complements this by guaranteeing the right to a fair trial, including the assistance of an interpreter where a person does not understand the language used in court.

D. CONCLUSION

The National Commission acknowledges that the Criminal Procedure Code (Amendment) Bill, 2026 presents Kenya with a significant opportunity to strengthen the fairness, accessibility and accountability of its criminal justice system while fulfilling its obligations under international and regional human rights treaties. By repealing provisions that enable pre-emptive detention and detention at the President's pleasure, and by incorporating clearer safeguards for intersex persons, persons with mental illness, victims of sexual offences, persons with disabilities and other vulnerable groups, the Bill can help ensure that criminal procedure is implemented in a manner that respects equality, dignity, liberty, privacy and the right to a fair hearing.

SIGNED BY:



CPA, CS JOSEPH NDIKU
AG. COMMISSION SECRETARY/CEO

2

WITNESS PROTECTION AGENCY

Telephone: (020) 7121337/8,
0770909207
Hotline: 0711222441,
0725222442
Toll Free No: 0800720460
Email: director@wpa.go.ke
When replying please quote
Ref no. and date



Liaison Office – Milimani Law Courts
4th Floor, Room No. 413
P.O. Box 28801 GPO
NAIROBI, 00100
KENYA

Ref: WPA/COLLABO/PARLIAMENT/011/BW

Date: 1st July 2026

Clerk of the National Assembly
P. O Box 41842 - 00100
NAIROBI

Attn: Jeremiah W. Ndombi, MBS

RE: WITNESS PROTECTION AGENCY COMMENTS ON THE CRIMINAL
PROCEDURE CODE (AMENDMENT) BILL, NO. 11 OF 2026 AND PENAL
CODE (AMENDMENT) BILL, NO. 12 OF 2026

The Witness Protection Agency is an independent and autonomous State Agency established under the Witness Protection Act (Cap 79 Laws of Kenya) which came into operation on 1st September 2008 vide Legal Notice No. 110/2008 dated 19th August 2008 as amended by the Witness Protection (Amendment) Act No. 2 of 2010 and No. 45 of 2016. Further amendments to the Act were made through the Statute Law (Miscellaneous Amendments) Act No. 18 of 2018 and No. 20 of 2020. Further, the Witness Protection Regulations, 2011 aims to facilitate the efficient and effective implementation of the Act. It was gazetted vide legal Notice No. 99 of 2011. The Witness Protection Rules, 2015 also applies to proceed in court with respect to protected witnesses. It was gazetted on 23rd November 2015 vide Legal Notice No. 225 of 2015.

The mandate of the Agency is to provide special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their cooperation with prosecution, law enforcement agencies and/or inquiry held before a court, commission or tribunal within or outside Kenya.

The Agency has reviewed the Criminal Procedure Code (Amendment) Bill, No. 11 of 2026 and Penal Code (Amendment) Bill, No. 12 of 2026 and submits the matrix of the specific clause with the proposed amendment and the justifications thereof.

Thank you for your continued cooperation and collaboration.



Jedidah W. Waruhiu, SC
DIRECTOR/CHIEF EXECUTIVE

Encl. Matrix or Proposed Amendments
to the Criminal Procedure Code (Amendment) Bill, No. 11 of 2026
and Penal Code (Amendment) Bill, No. 12 of 2026



WITNESS PROTECTION AGENCY

The Agency appreciates the opportunity accorded by the Departmental Committee on Justice and Legal Affairs to submit comments on the two Bills and generally supports the Bills Subject to the proposals set out herein.

A. COMMENTS ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, NO. 11 OF 2026

NO.	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
1.	Clause 32 Amends section 77 of the CPC	Add ' and Witness Protection Act ' immediately after the Sexual Offences Act Further Amend section 77(3) by adding the following para 'In the case of the Witness Protection Act to imprisonment for a term of not less than ten years upon conviction	To align with the witness protection Act on prohibited publications relating to Witness Protection

NO.	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
2.	Clause 32 New proposal – insertion of New Section 77A – Referral of Threatened Witnesses	Insert new section 77A as follows: ‘(1) Where at any stage of criminal proceedings the court is satisfied that a witness or any other person connected with the proceedings may be exposed to danger, intimidation, harassment, retaliation or any other security risk arising from participation in the proceedings, the court may make such interim protective orders as it considers necessary and may refer the matter to the Witness Protection Agency for assessment in accordance with the Witness Protection Act. (2) A referral under subsection (1) may be made by the court on its own motion or upon application by a prosecutor or any other person. (3) A referral under this section shall not preclude the court from making any other protective order authorised by law.’	1. To align criminal procedure with the Witness Protection Act and to also promote early identification and referral of threatened witnesses. 2. This will in turn reduce witness intimidation, withdrawal and attrition.
3.	Clause 41 New proposal – amendment of Section 123A	Amend section 123A (1) by inserting a new paragraph: ‘(e) the existence of threats, intimidation, harassment, interference or risk to the safety or	1. To expressly incorporate witness safety into bail considerations. 2. Witness intimidation should be a sufficient basis for review or cancellation of bail.

NO.	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
	Exception to right to Bail and bond	security of a witness, victim, or a protected person.' Further, insert the following new subsection immediately after section 123A (2) Insert subsection (3): '(3) Where the court is satisfied that an accused person has threatened, intimidated, harassed, contacted or interfered with a witness, victim or protected person, the court may review, vary, suspend or cancel bail or bond terms.'	3. To align with Bail and Bond Policy, 2015 4. Court have denied and or cancelled bail and bond to accused persons based on the interference, threats and intimidations to protected witnesses and their related persons. Republic vs Nyamai & 11 Others (Criminal Case No. 25 of 2020) [2022] KEHC 10376 (KLR)
4.	Clause 33 – Proposed Section 395 (Criminal Procedure Rules Committee)	Insert paragraph: '(h) the Director of the Witness Protection Agency or an officer of the Agency nominated by the Director;' renumber subsequent paragraphs accordingly.	1. To add practical witness protection expertise is represented in criminal procedure rule-making. 2. The Agency is a Council member of the National Council on Administration of Justice, participates in various Committees and closely collaborates and coordinates with the proposed membership of Criminal Procedure Rules Committee in the administration of Justice and hence critical for it to be included in the membership.

NO.	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
			3. To advance the law reform agenda to ensure measures and strategies on the covert operations and activities of the Agency are upheld throughout to the investigative stage, at the trial stage and post testimony

B. COMMENTS ON THE PENAL CODE (AMENDMENT) BILL, NO. 12 OF 2026

WPA has no submissions on the Penal Code (Amendment) Bill 12 of 2026: The Agency supports the proposals.



Jedidah W. Waruhiu S.C

DIRECTOR /CHIEF EXECUTIVE



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: The Criminal Procedure Code (Amendment) Bill, 2026 (National
Assembly Bill No. 11 of 2026)

INSTITUTION: Legal Advice Center (Kituo Cha Sheria) Kenya

DATE: 1st JULY 2026

MEMORANDUM

Introduction

Kituo Cha Sheria (Legal Advice Centre) welcomes the publication of the Criminal Procedure Code (Amendment) Bill, 2026, which seeks to align the Criminal Procedure Code (Cap. 75) with the Constitution of Kenya, 2010, the Mental Health Act, the Magistrates' Courts Act, the High Court (Organization and Administration) Act and other contemporary legal developments.

The Bill introduces several progressive reforms including the recognition of intersex persons within criminal procedure, modernization of criminal terminology, reform of provisions relating to accused persons with mental illness, abolition of outdated preventive detention provisions and alignment of prosecutorial powers with Article 157 of the Constitution.

While Kituo Cha Sheria supports the overall objectives of the Bill, several provisions would benefit from further refinement to strengthen constitutional compliance, improve legal certainty and enhance practical implementation. The recommendations set out below are intended to assist Parliament in strengthening the Bill before enactment.

Analytical Framework

In preparing this Memorandum, Kituo Cha Sheria has reviewed Criminal Procedure Code (Amendment) Bill, 2026 against the Constitution of Kenya, 2010, existing statutory frameworks, applicable Kenyan jurisprudence, and Kenya's regional and international human rights obligations. The recommendations contained herein are intended to support Parliament in strengthening the proposed legislation to ensure that it is constitutionally compliant, legally coherent and capable of promoting an effective, fair and rights-based criminal justice system.

A. Constitutional Framework

The analysis is principally guided by the Constitution of Kenya, 2010, particularly the national values and principles of governance under Articles 10 and 259, and the Bill of Rights under Chapter Four. Particular regard has been given to the constitutional guarantees of equality and freedom from discrimination (Article 27), human dignity (Article 28), freedom and security of the person (Article 29), access to justice (Article 48), the rights of arrested persons (Article 49), the right to a fair hearing (Article 50), the rights of children (Article 53), the rights of persons with disabilities (Article 54), and the constitutional principles governing the exercise of prosecutorial powers under Article 157. Collectively, these provisions establish the constitutional standards against which criminal legislation must be measured and interpreted.

B. Kenyan Jurisprudence

This Memorandum is further informed by the evolving jurisprudence of the superior courts on constitutional criminal justice. Particular reliance has been placed on the decisions of the Supreme Court in *Francis Karioko Muruatetu & Another v Republic*, which affirmed that mandatory sentencing regimes are inconsistent with the Constitution where they deprive courts of the discretion to consider the individual circumstances of an offender and the offence, and *Muruatetu & Another v Republic; Katiba Institute & 5 Others (Amicus Curiae)*, which clarified the scope of that decision while reaffirming the constitutional importance of individualized sentencing. Consideration has also been given to *Joseph Lendrix Waswa v Republic*, which recognised the constitutional rights of victims to participate meaningfully in criminal proceedings. These authorities reinforce the principles of legality, proportionality, judicial independence and procedural fairness that underpin the recommendations contained in this Memorandum.

C. International and Regional Human Rights Standards

The recommendations are also informed by Kenya's obligations under international and regional human rights instruments to which the Republic is a party. These include the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities and, where relevant, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The Memorandum also draws guidance from internationally accepted standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),

which provide important benchmarks for the humane administration of criminal justice and the protection of persons deprived of their liberty.

D. Legislative Drafting Principles

In developing the recommendations contained in this Memorandum, Kituo Cha Sheria has sought not only to identify constitutional or policy concerns but also to propose practical legislative solutions. Accordingly, where amendments are recommended, they are presented in legislative drafting language intended to facilitate consideration by Parliament and, where appropriate, direct incorporation into the Bill. This approach reflects the objective of supporting Parliament in enacting legislation that is constitutionally sound, internally coherent and capable of effective implementation.

CLAUSE 2 – AMENDMENT OF SECTION 2 (DEFINITIONS)

Clause 2 modernizes the interpretation section of the Criminal Procedure Code by introducing new statutory definitions and updating existing terminology to reflect current constitutional and institutional frameworks. These amendments are largely progressive and promote consistency with other legislation. However, additional clarification is necessary to ensure certainty in the implementation of the new mental health provisions introduced elsewhere in the Bill.

S/No	Section / Clause	Provision of the Bill	Rationale for Amendment	Recommendation	Proposed Amendment
1	Section 2 (Clause 2)	Clause 2 provides: “ Section 2 of the Criminal Procedure Code (hereinafter referred to as the 'principal Act'), is amended—(a) in the definition of 'Registrar of the High Court', by deleting the words ' <i>includes a Deputy Registrar of the High Court and a district</i> ’	The proposed definitions generally enhance legal certainty and align the Code with contemporary legislation. The inclusion of the definition of "intersex person" promotes recognition of constitutional rights under Articles 27 and 28. Likewise, incorporating	Support Clause 2 with amendment.	Existing Bill wording: “person with mental illness has the meaning assigned to it under section 2 of the Mental Health Act. “Insert immediately thereafter the following new definition: “qualified mental health practitioner” means a person registered under the Mental Health Act and duly authorised to assess, diagnose and recommend treatment for persons with mental illness, including a psychiatrist, clinical psychologist or medical practitioner with specialist training in mental health.

		registrar of the High Court' and substituting therefor the words 'means the Registrar of the High Court appointed pursuant to section 18 of the High Court (Organization and Administration) Act'; (b) in the definition of 'summary trial', by deleting the words 'subordinate court' and substituting therefor the words 'magistrate's court'; (c) by inserting the following new definitions in proper alphabetical sequence— 'intersex person' means a person with a congenital condition in which the biological sex characteristics cannot be exclusively categorized in the common binary of female	the definition of "person with mental illness" by reference to the Mental Health Act promotes consistency across statutes. However, the Bill subsequently requires examination by a "qualified mental health practitioner" under proposed section 162 without defining that term. This omission may create uncertainty regarding who is competent to undertake statutory fitness assessments.	
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		or male due to inherent and mixed anatomical, hormonal, gonadal or chromosomal patterns, which could be apparent prior to, at birth, in childhood, puberty or adulthood; <i>'person with mental illness'</i> has the meaning assigned to it under section 2 of the Mental Health Act."			
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CLAUSE 5 – AMENDMENT OF SECTION 7 (SENTENCES)

Clause 5 removes obsolete references to subordinate courts of the first and second class following the enactment of the Magistrates' Courts Act. The amendment is necessary to harmonize the Criminal Procedure Code with the current court structure. Nevertheless, the deletion of the previous sentencing provisions should be accompanied by a clarifying provision identifying the applicable source of sentencing jurisdiction.

S/No	Section / Clause	Provision of the Bill	Rationale for Amendment	Recommendation	Proposed Amendment
2	Section 7 (Clause 5)	Clause 5 provides: "Section 7 of the principal Act is amended— (a) in subsection (1), by	The amendment correctly removes references to a court hierarchy that no longer exists following the	Support with amendment.	Existing Bill wording: "Section 7 of the principal Act is amended..." Insert immediately after the amended subsection (1): "(1A) The sentencing jurisdiction of a magistrate's court shall be as prescribed under the

		deleting the words ' <i>subordinate court of the first class's</i> ' and substituting therefor the words ' <i>magistrate's court</i> '; (b) by deleting subsection (2); (c) by deleting subsection (3)."	enactment of the Magistrates' Courts Act. However, the complete deletion of subsections prescribing sentencing jurisdiction without identifying the applicable statutory framework may create uncertainty regarding the sentencing powers of magistrates' courts.		Magistrates' Courts Act and any regulations made thereunder."
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CLAUSE 7 – AMENDMENT OF SECTION 15 (SUSPENDED SENTENCES)

Clause 7 seeks to modernise the law relating to suspended sentences by removing references to corporal punishment and introducing a statutory limit on the operational period of suspended sentences. These amendments are generally consistent with the Constitution and contemporary sentencing principles. However, the proposed operational period may be inadequate in certain cases and would benefit from the introduction of a minimum period to preserve the rehabilitative and deterrent objectives of suspended sentences.

S/No	Section / Clause	Provision of the Bill	Rationale for Amendment	Recommendation	Proposed Amendment
3	Section 15 (Clause 7)	Clause 7 provides: "Section 15 of the principal Act is amended—(a)	Kituo Cha Sheria supports the removal of corporal punishment as a trigger for the	Support Clause 7 with amendment.	Existing Bill wording: "(1A) The operational period under subsection (1) shall not exceed the term of the sentence

		in subsection (1) by deleting the words '<i>corporal punishment</i>'; (b) by inserting the following new subsection immediately after subsection (1)—**'(1A) The operational period under subsection (1) shall not exceed the term of the sentence imposed.'"	activation of suspended sentences. The amendment aligns the Criminal Procedure Code with Article 29 of the Constitution, which guarantees every person freedom from cruel, inhuman or degrading punishment. The introduction of an operational period is also welcome as it removes uncertainty that has previously surrounded suspended sentences. However, limiting the operational period solely to the duration of the sentence imposed may result in disproportionately short supervision periods for minor offences, thereby weakening the deterrent and rehabilitative effect of suspended sentences. Comparative sentencing regimes generally prescribe both minimum and		imposed. "Proposed replacement:"(1A) The operational period under subsection (1) shall be not less than six months and shall not exceed the term of the sentence imposed or two years, whichever is the greater. "This amendment preserves judicial discretion while ensuring that suspended sentences remain meaningful irrespective of the length of the custodial sentence imposed.
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			maximum operational periods to ensure consistency and proportionality.		
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CLAUSE 8 – INSERTION OF NEW SECTION 27A (SEARCH OF INTERSEX PERSONS)

The insertion of section 27A represents a significant advancement in the protection of the rights of intersex persons during criminal investigations. The provision gives legislative effect to the constitutional guarantees of equality, dignity and privacy by recognising the autonomy of intersex persons during searches. Nevertheless, the proposed provision would benefit from additional safeguards to enhance accountability and practical implementation.

S/No	Section / Clause	Provision of the Bill	Rationale for Amendment	Recommendation	Proposed Amendment
4	New Section 27A (Clause 8)	Clause 8 inserts the following new section— "27A. Whenever it is necessary to cause an intersex person to be searched, the search shall where reasonably practicable be conducted by a person of the sex which the intersex person shall prefer with strict regard to decency and in such	Kituo Cha Sheria strongly supports the introduction of statutory safeguards governing the search of intersex persons. The proposed provision advances Articles 27, 28 and 31 of the Constitution by recognising the dignity, equality and bodily autonomy of intersex	Support Clause 8 with amendment.	Existing Bill wording: "Whenever it is necessary to cause an intersex person to be searched, the search shall where reasonably practicable be conducted by a person of the sex which the intersex person shall prefer with strict regard to decency and in such manner as to protect the dignity of the intersex person." Proposed replacement:"27A.(1) Whenever it is necessary to search an intersex person, the officer responsible shall first inquire from the intersex person their preferred sex of the searching officer.(2) The search shall be

		manner as to protect the dignity of the intersex person."	persons within the criminal justice system. However, the phrase "where reasonably practicable" is not defined and may permit arbitrary departures from the rule. The provision also does not require officers to ascertain the preference of the intersex person, nor does it establish any accountability mechanism where compliance is not possible. Without such safeguards, the protection afforded by the section risks becoming illusory in practice.		conducted by a person of the sex preferred by the intersex person.(3) Where compliance with subsection (2) is not reasonably practicable, the officer shall record in writing the reasons for the departure before conducting the search.(4) Every search conducted under this section shall be carried out with due regard to privacy, dignity and respect for the bodily integrity of the intersex person.(5) A person aggrieved by a search conducted in contravention of this section may lodge a complaint with the Independent Policing Oversight Authority or such other body as may be established by law."
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CLAUSES 10–29 – REPEAL OF SECTIONS 43–61A (SECURITY FOR KEEPING THE PEACE AND GOOD BEHAVIOUR)

Clauses 10 to 29 propose the repeal of sections 43 to 61A of the Criminal Procedure Code, thereby abolishing the statutory regime that permitted preventive detention through the requirement to execute bonds for keeping the peace or being of good behaviour. This is one of the most significant constitutional reforms contained in the Bill. The repeal removes a colonial-era mechanism that permitted deprivation of liberty based on anticipated future conduct rather than criminal responsibility established through due process.

S/No	Section / Clause	Provision of the Bill	Rationale for Amendment	Recommendation	Proposed Amendment
5	Sections 43–61A (Clauses 10–29)	Clause 10: "The principal Act is amended by repealing section 43." Clause 11: "The principal Act is amended by repealing section 44." Clause 12: "The principal Act is amended by repealing section 45." Clause 13: "The principal Act is amended by repealing section 46." Clause 14: "The principal Act is amended by repealing section 47." Clause 15: "The principal Act	Kituo Cha Sheria strongly supports the repeal of sections 43 to 61A. These provisions constituted a preventive detention regime inherited from the colonial administration and permitted restrictions on personal liberty in the absence of criminal liability established through a fair trial. Their continued existence has been difficult to reconcile with Articles 27, 28, 29, 49 and 50 of the Constitution,	Support the repeal of sections 43–61A and introduce a transitional provision.	Existing Bill wording: "The principal Act is amended by repealing sections 43 to 61A." Insert immediately after Clause 29 the following new transitional clause: "Transitional Provision Any person who, immediately before the commencement of this Act, is detained, imprisoned or otherwise subject to an order issued under sections 43 to 61A of the principal Act shall, upon commencement of this Act, stand discharged from such order unless proceedings have been commenced under any other written law. The court shall review every pending matter instituted under the repealed provisions and make such consequential orders as may be necessary to give full

		is amended by repealing section 48." Clause 16: "The principal Act is amended by repealing section 49." Clause 17: "The principal Act is amended by repealing section 50." Clause 18: "The principal Act is amended by repealing section 51." Clause 19: "The principal Act is amended by repealing section 52." Clause 20: "The principal Act is amended by repealing section 53." Clause 21: "The principal Act is amended by repealing section 54." Clause 22: "The principal Act is amended by repealing section	which protect equality, dignity, liberty, due process and the presumption of innocence. Their repeal therefore represents an important constitutional and human rights reform. Nevertheless, the Bill does not address the legal status of persons who may still be subject to orders issued under the repealed provisions. In the absence of transitional provisions, uncertainty may arise regarding pending proceedings or existing detention and bond orders.		effect to this Act."
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		55."Clause 23: "The principal Act is amended by repealing section 56."Clause 24: "The principal Act is amended by repealing section 57."Clause 25: "The principal Act is amended by repealing section 58."Clause 26: "The principal Act is amended by repealing section 59."Clause 27: "The principal Act is amended by repealing section 60."Clause 28: "The principal Act is amended by repealing section 61."Clause 29: "The principal Act is amended by repealing section 61A."			
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CLAUSE 35 – AMENDMENT OF SECTION 82 (NOLLE PROSEQUI)

Clause 35 seeks to align the Criminal Procedure Code with Article 157(8) of the Constitution by requiring the Director of Public Prosecutions (DPP) to obtain the permission of the court before discontinuing criminal proceedings through a *nolle prosequi*. This amendment strengthens judicial oversight over prosecutorial discretion and promotes transparency and accountability in the administration of criminal justice. However, the proposed amendment does not prescribe the factors that the court should consider when determining whether to grant permission, leaving room for inconsistent judicial practice.

S/No	Section / Clause	Provision of the Bill	Rationale for Amendment	Recommendation	Proposed Amendment
6	Section 82 (Clause 35)	Clause 35 provides: “Section 82 of the principal Act is amended— (a) in subsection (1) by deleting the words <i>'may enter a nolle prosequi, either by stating in court or by informing the court in writing that the Republic intends that the proceedings shall not continue'</i> and substituting therefor the words <i>'with the</i>	Kituo Cha Sheria supports this amendment as it gives full effect to Article 157(8) of the Constitution, which expressly requires the Director of Public Prosecutions to obtain the permission of the court before discontinuing criminal proceedings. The amendment appropriately strengthens judicial oversight and enhances public	Support Clause 35 with amendment.	Existing Bill wording: “with the permission of the court may enter a nolle prosequi.” Insert immediately after subsection (2) the following new subsection:“(3) In determining whether to grant permission under this section, the court shall take into account— (a) the interests of justice;(b) the rights and legitimate interests of the victim;(c) the reasons advanced by the Director of Public Prosecutions for discontinuance;(d) whether the discontinuance is consistent with Article 157(11) of the Constitution;(e) the stage of the proceedings; and(f) the public interest.”

		<i>permission of the court may enter a nolle prosequi'</i>; (b) in subsection (2), by inserting the words '<i>with the permission of the court</i>' immediately after the words '<i>nolle prosequi is</i>'.	confidence in prosecutorial decision-making. Nevertheless, the Bill does not specify the considerations that should guide the exercise of judicial discretion when determining whether to grant or refuse permission. Establishing statutory criteria would promote consistency, transparency and accountability while safeguarding the interests of victims, accused persons and the public.		
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CLAUSE 49 – REPEAL AND REPLACEMENT OF SECTION 162 (FITNESS TO STAND TRIAL)

Clause 49 comprehensively reforms the law governing accused persons who may be unfit to stand trial by replacing the outdated provisions of section 162 with a modern statutory framework based on mental capacity rather than outdated concepts of insanity. The reforms are welcome and are consistent with the Constitution, the Mental Health Act and Kenya's obligations under the Convention on the Rights of Persons with Disabilities (CRPD). The proposed framework, however, requires additional safeguards to ensure

periodic judicial review, protection against indefinite detention and enhanced procedural fairness.

S/No	Section / Clause	Provision of the Bill	Rationale for Amendment	Recommendation	Proposed Amendment
7	Section 162 (Clause 49)	Clause 49 repeals section 162 and substitutes it with a new section establishing procedures for determining fitness to stand trial, including: • determination of fitness by the court;• assessment by a qualified mental health practitioner;• temporary committal to a mental health facility for assessment;• inpatient or outpatient treatment where appropriate;• continuation of proceedings where the accused is fit; and• discharge	The proposed replacement represents one of the most progressive reforms contained in the Bill. It shifts the legal inquiry from outdated concepts of insanity to functional capacity and recognises that an accused person may only be tried where they are capable of understanding the proceedings and effectively participating in their defence. The introduction of judicial oversight, professional mental health assessment and community-based	Support Clause 49 with amendment.	Existing Bill wording: Clause 49 introduces a new section 162 but contains no provision requiring periodic review of treatment orders. Insert immediately after subsection (6): "(6A) Where an accused person is committed to a mental health facility under this section, the court shall review the order at intervals not exceeding ninety days and may confirm, vary or discharge the order after considering a report from the medical officer in charge of the mental health facility and any representations made by the accused person or his or her legal representative. "Insert a further subsection: "(6B) A person committed under this section shall be entitled to legal representation during every review conducted under subsection (6A)."

		where the court is not satisfied that the accused committed the alleged act.	treatment options is commendable. However, the Bill does not provide for mandatory periodic judicial review of persons committed for treatment. Without regular review, there remains a risk that accused persons may remain subject to treatment orders for prolonged periods without adequate judicial supervision, contrary to Articles 25(c), 28, 29 and 50 of the Constitution.		
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CLAUSE 50 – REPEAL AND REPLACEMENT OF SECTION 166 (SPECIAL FINDING OF NOT GUILTY BY REASON OF MENTAL ILLNESS)

Clause 50 reforms the legal consequences arising where an accused person is found not criminally responsible by reason of mental illness. The amendment replaces the former indefinite executive detention regime with a judicially supervised framework centred upon treatment and medical assessment. This represents a significant constitutional improvement. Nonetheless, the Bill should expressly recognise the principle that detention in a mental health facility should continue only for as long as it remains medically necessary.

S/No	Section / Clause	Provision of the Bill	Rationale for Amendment	Recommendation	Proposed Amendment
8	Section 166 (Clause 50)	Clause 50 repeals section 166 and substitutes it with a new provision providing for: • a special verdict of not guilty by reason of inability to understand the nature or consequences of one's acts; • temporary committal for medical assessment; • reports by the medical officer in charge of the mental health facility; • judicial determination regarding continued inpatient treatment; and • commitment only where treatment remains necessary.	Kituo Cha Sheria strongly supports the repeal of the former section 166, which vested excessive discretion in the Executive and contributed to indefinite detention of persons with mental illness. The proposed judicial model is more consistent with Articles 25, 27, 28, 29, 50 and 54 of the Constitution and reflects international human rights standards. Nevertheless, the Bill should expressly provide that treatment orders remain subject to continuous judicial	Support Clause 50 with amendment.	Existing Bill wording: Clause 50 provides for commitment to a mental health facility where the court is satisfied that inpatient treatment is necessary. Insert the following new subsection immediately after subsection (5): "(6) A person committed under this section shall remain in a mental health facility only for so long as inpatient treatment is medically necessary.(7) The medical officer in charge of the mental health facility shall submit a report to the court every six months regarding the condition of the patient and whether continued inpatient treatment remains necessary.(8) Upon receipt of a report under subsection (7), the court may discharge the person, vary the treatment order or make such further orders as are necessary in the interests of justice."

			supervision and should cease immediately once inpatient treatment is no longer medically justified.		
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GENERAL OBSERVATION ON CLAUSES 49 AND 50

Kituo Cha Sheria commends Parliament for replacing the outdated criminal procedure framework relating to persons with mental illness with a rights-based and treatment-oriented approach. These amendments reflect a significant departure from colonial-era provisions that emphasised indefinite detention over therapeutic intervention. The Committee is encouraged to strengthen these reforms further by introducing mandatory judicial review mechanisms, safeguarding access to legal representation, and ensuring that deprivation of liberty remains proportionate, medically justified and subject to effective judicial oversight.

CLAUSE 52 – AMENDMENT OF SECTION 171 (COSTS IN PRIVATE PROSECUTIONS)

Clause 52 updates section 171 by removing obsolete references to subordinate courts and revising the circumstances under which costs may be awarded against private prosecutors. The amendment also introduces statutory monetary limits on recoverable costs. Kituo Cha Sheria welcomes the modernization of the provision but recommends that the statutory caps be made discretionary to preserve judicial independence and ensure that awards adequately compensate accused persons in deserving cases.

S/No	Section / Clause	Provision of the Bill	Rationale for Amendment	Recommendation	Proposed Amendment
9	Section 171 (Clause 52)	Clause 52 provides: Section 171 is amended— (a) in subsection (1), by deleting the words "of a	The modernization of terminology is supported. The revised subsection appropriately retains judicial discretion to award costs where a private prosecution fails. However,	Support with amendment.	Existing Bill wording: "the costs shall not exceed twenty thousand shillings in the High Court or ten thousand shillings in the case of an acquittal or discharge by a magistrate's court. Proposed replacement: "the court

		<i>subordinate court of the first or second class";</i>(b) by deleting subsection (2) and substituting the following— "(2) A judge of the High Court or a magistrate who acquits or discharges a person accused of an offence may, if the prosecution for the offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, order the private prosecutor to pay to the accused such reasonable costs as the judge or magistrate	prescribing fixed monetary ceilings of KShs. 20,000 and KShs. 10,000 may undermine the principle of full compensation and may become outdated due to inflation. Courts should retain discretion to award reasonable costs based on the complexity of the proceedings and the actual expenses reasonably incurred.		may award such reasonable costs as it considers just, having regard to the complexity of the proceedings, the conduct of the parties and the actual expenses reasonably incurred by the accused. "Alternatively, Parliament may provide for periodic review of the statutory limits by regulations.
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		may deem fit: Provided that— (I) the costs shall not exceed twenty thousand shillings in the High Court or ten thousand shillings in the case of an acquittal or discharge by a magistrate's court; and (ii) no such order shall be made if the judge or magistrate considers that the private prosecutor had reasonable grounds for making his complaint."			
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CLAUSE 54 – AMENDMENT OF SECTION 198 (LANGUAGE OF THE COURTS)

Clause 54 gives legislative recognition to Kiswahili, English and Kenyan Sign Language as the languages of all courts. This amendment implements Articles 7 and 54 of the Constitution and promotes equal access to justice for persons with disabilities and speakers of Kenya's official languages. The amendment is strongly supported but should expressly preserve the right to interpretation where necessary.

S/ N o	Section / Clause	Provision of the Bill	Rationale for Amendment	Recommend ation	Proposed Amendment
10	Section 198 (Clause 54)	Clause 54 provides: Section 198 is amended by deleting subsection (4) and substituting the following – "(4) The language of all courts shall be Kiswahili, English and Kenya Sign Language."	Kituo Cha Sheria welcomes this amendment as it reflects the constitutional recognition of Kiswahili as an official language and Kenya Sign Language as a language of communication for persons with hearing disabilities. Nevertheless, the amendment should expressly preserve the right of every accused person and witness to interpretation into a language they understand, as guaranteed under Article 50(2)(m) of the Constitution.	Support with amendment.	Existing Bill wording: "The language of all courts shall be Kiswahili, English and Kenya Sign Language." Proposed replacement: "The language of all courts shall be Kiswahili, English and Kenya Sign Language. Every accused person, witness or other participant who does not understand the language used in court shall be entitled, without charge, to the assistance of a competent interpreter throughout the proceedings."

CLAUSE 58 – AMENDMENT OF SECTION 221 (COMMITTAL FOR SENTENCE)

Clause 58 updates section 221 to reflect the restructuring of magistrates' courts under the Magistrates' Courts Act. The amendment promotes consistency in terminology and jurisdiction. Kituo Cha Sheria supports the amendment but recommends that committal decisions be accompanied by written reasons to promote transparency and facilitate appellate review.

S/No	Section / Clause	Provision of the Bill	Rationale for Amendment	Recommendation	Proposed Amendment
11	Section 221 (Clause 58)	Clause 58 substitutes subsection (1) and amends subsections (2) and (3) by replacing references to subordinate courts of the first class with magistrates' courts having competent jurisdiction.	The amendment correctly aligns the Criminal Procedure Code with the present structure of the magistracy. However, decisions committing convicted persons to another court for sentencing significantly affect the administration of justice and should therefore be accompanied by recorded reasons.	Support with amendment.	Insert a new subsection after subsection (1): "A court committing a convicted person for sentence under this section shall record the reasons for the committal in writing and those reasons shall form part of the record of the proceedings."

CLAUSE 61 – REPLACEMENT OF SECTION 280 (REFUSAL TO PLEAD)

Clause 61 modernizes the law relating to accused persons who refuse or are unable to plead. The amendment replaces archaic language with a procedure requiring the court to enter a plea of not guilty where appropriate and to determine whether the accused person is capable of making a defence. Kituo Cha Sheria welcomes this reform but recommends updating the terminology to reflect the rights-based language adopted elsewhere in the Bill.

S/No	Section / Clause	Provision of the Bill	Rationale for	Recommendation	Proposed Amendment
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			Amendment		
12	Section 280 (Clause 61)	Clause 61 substitutes section 280 with a new provision requiring the court to enter a plea of not guilty where an accused stands mute or is unable to plead and, where necessary, determine whether the accused is of sound or unsound mind before proceeding under section 166.	The proposed section significantly improves procedural fairness by ensuring that proceedings are not frustrated where an accused refuses or is unable to plead. However, the continued use of the expressions "sound mind" and "unsound mind" is inconsistent with the terminology adopted elsewhere in the Bill, which refers to "mental illness" and "fitness to stand trial". Harmonising the terminology would promote consistency and reduce stigma associated with mental	Support with amendment.	Existing Bill wording: "...if he is found of sound mind... if he is found of unsound mind..." Proposed replacement: "...if the court determines that the accused person is fit to stand trial..." "...if the court determines that the accused person is unfit to stand trial, the court shall proceed in accordance with section 162."

			health conditions.		
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GENERAL RECOMMENDATIONS

Kituo Cha Sheria supports the overarching objective of the Criminal Procedure Code (Amendment) Bill, 2026 to align Kenya's criminal procedure framework with the Constitution, the Mental Health Act, the Magistrates' Courts Act and contemporary human rights standards.

The Committee is, however, encouraged to strengthen the Bill by—

1. Defining "**qualified mental health practitioner**" to support implementation of the new mental health provisions.
2. Introducing mandatory periodic judicial review of treatment orders under sections 162 and 166.
3. Strengthening accountability measures relating to searches of intersex persons.
4. Introducing objective statutory criteria governing judicial approval of a *nolle prosequi*.
5. Providing transitional provisions for persons affected by the repeal of sections 43–61A.
6. Preserving the constitutional right to interpretation in criminal proceedings.
7. Harmonising mental health terminology throughout the Code.
8. Ensuring sentencing and committal provisions promote transparency, proportionality and judicial accountability.

CONCLUSION

Kituo Cha Sheria commends the National Council on the Administration of Justice and the National Assembly for undertaking a comprehensive review of the Criminal Procedure Code. The Bill represents a significant step towards a modern, constitutional and rights-based criminal justice system.

Subject to the recommendations contained in this Memorandum, Kituo Cha Sheria respectfully urges the Departmental Committee on Justice and Legal Affairs to recommend the enactment of the Bill with amendments.



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL

Our Ref: AG/LDD/237/1/101
Your Ref: NA/DDC/JLAC/2026/050

1st July, 2026

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

RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 11 OF 2026) AND THE PENAL CODE (AMENDMENT) BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 12 OF 2026)

This has reference to your letter dated the 24th June, 2026, under Ref. NA/DDC/JLAC/2026/050, and the invitation to a meeting scheduled for the 2nd July, 2026, to make submissions before the Departmental Committee on Justice and Legal Affairs on the Criminal Procedure Code (Amendment) Bill, 2026 (National Assembly Bill No. 11 of 2026).

We have perused the contents of the Bill and, in our considered view, it does not raise significant constitutional or statutory issues. This Office remains available to assist the Departmental Committee should any legal issues requiring our legal advice arise during the processing of the Bill.

We thank you and assure you of our continued support.


HON. SHADRACK J. MOSE CBS
SOLICITOR-GENERAL

SHERIA HOUSE, HARAMBEE AVENUE

P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995

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DEPARTMENT OF JUSTICE

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REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/LDD/237/1/101
Your Ref: NA/DDC/JLAC/2026/050

1st July, 2026

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

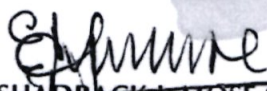
RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 11 OF 2026) AND THE PENAL CODE (AMENDMENT) BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 12 OF 2026)

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Kindly be advised that the I shall be unable to attend before the Committee as requested on the appointed date due to a prior engagement and in this regard, have nominated the below-listed State Counsels to attend before the Committee on my behalf:

1. Mr. Samson Maundu, Deputy Chief Parliamentary Counsel
2. Ms. Bochere Omariba, Principal State Counsel

We thank you and assure you of our continued support.


HON. SHADRACK J. MOSE CBS
SOLICITOR-GENERAL

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COMMENTS ON THE PENAL CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2026)

S/NO.	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
1.	23	Replace "shall be sentenced to death" with "is liable upon conviction to the death penalty or such other lawful sentence as the court may determine after considering mitigating and aggravating circumstances."	The proposal seeks to implement Supreme Court decision on <i>Muruatetu</i> while retaining death penalty as maximum sentence.
2.	25	Correct the marginal notes to read sections 295A, 295B, 295C and 295D and not section 298	To correct the section numbering error making reference to section 298 instead of section 295

COMMENTS ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 11 OF 2026)

S/NO.	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
1.	8	The new provision in 27A may be expanded to provide how intersex person's preference is to be ascertained and recorded before the search.	This is meant to ensure that the intersex person's constitutional right to dignity is practically protected thereby giving full effect to the amendment.
2.	49	Introduce exceptions for open court judicial reporting that redacts the identity of the vulnerable individual.	The prohibition against publishing a report of the evidence or court decisions regarding a person found unfit to stand trial until conclusion of the trial may contravene article 33 (freedom of expression) and article 34 (freedom of the media). While protecting the privacy and mental health status of an accused person is legitimate under Article 31, a criminal penalty that lacks an exception for open-court judicial reporting



			where the identity of the vulnerable person is merely redacted, may offend the Constitution.
3.	53	The amendment has introduced the term computer without defining	Introduce the definition of computer under section 2 to align with other laws.
4.	80	Release of exhibits: The Bill may be amended to explicitly carve out exceptions for illicit, hazardous, perishable or contraband items. Such exhibits should be destroyed or disposed of in accordance with specific existing statutory frameworks rather than returned to proprietors.	The blanket provision that “all exhibits shall be released to proprietors upon proof of proprietorship” potentially creates a legal mandate to return illicit substances prohibited, firearms and counterfeit currency to their owners which may violate the state’s protective mandate.
5.	83	There is need to provide for specific functions of the Rules Committee.	Whereas the proposed section 395(2) provides wide functions/powers of the Rules Committee, there is need to clearly outline the scope of the functions/and powers of the Committee. This is meant to ensure that the scope of the mandate of the Committee is well delineated.
6.	83	There is need to provide for the procedure of the Rules Committee including the meetings, funds and tenure of committee members.	These may be provided for either in the Bill or the Bill may donate that power to the Chief Justice through an express clause.



THE JUDICIARY

OFFICE OF THE CHIEF REGISTRAR OF THE JUDICIARY

Our Ref: JUD/CRJ/23.2/2026

Date: 30 June 2026

Your Ref: NA/DDC/JLAC/2026/050

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

(2) Abenayo Wabwire, HoD
For the attention of JLAC.

DM 10/07/26

DDC
8/7/26

INVITATION BY JLAC TO SUBMIT COMMENTS ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL (NA BILL NO. 11 OF 2026) & THE PENAL CODE (AMENDMENT) BILL (NA BILL NO. 12 OF 2026)

We acknowledge, with gratitude, your letter Ref: NA/DDC/JLAC/2026/050 dated 24th June 2026 inviting the Judiciary and other stakeholders to a meeting with the Justice & Legal Affairs Committee of the National Assembly on 2nd July 2026 to submit comments on the above referenced Bills sponsored by the Honorable George Gitonga Murugara, MP & JLAC Chairperson.

The Judiciary thanks the National Assembly, and the JLAC Chairperson in particular, for advancing these Bills, which seek to align the Penal Code and Criminal Procedure Code with the Constitution and relevant court pronouncements.

Having reviewed the Bills, we note that their contents reflect proposals developed over years of consultation among state and non-state agencies in the criminal justice system, under the National Criminal Justice Reforms Committee of the National Council on the Administration of Justice. The Judiciary therefore fully supports the legislative proposals, save for the following observations:

Comments on the Penal Code Amendment Bill

- a. Clause 25 seeks to distinguish robbery from aggravated robbery, as proposed by the High Court in **Joseph Kaberia Kahinga and 11 Others v Attorney General**. However, the distinction remains unclear: the proposed Section 295A defines robbery as theft with actual or threatened violence, while Section 295C includes wounding, beating, striking, or other personal violence as factors elevating simple robbery to aggravated robbery. The Committee should consider language that more clearly distinguishes the nature of violence separating the two offences.



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- b. We note that the manner in which the two offences are structured does not provide ample room for plea bargaining which would work best if there was certainty as to different levels and sentences for aggravated robbery, to enable prosecutors and accused persons to make informed choices during plea bargaining.
- c. We note that there is no proposal to amend Section 298 which provides for the offence of assault with intent to steal in the following terms:

Any person who assaults any person with intent to steal anything is guilty of a felony and is liable to imprisonment for five years.

There does not seem to be a clear distinction between this offence and the proposed Section 295B which defines attempted robbery as an instance where a person assaults another with intent to steal and uses or threatens to use actual violence.

- d. We note that the proposed sentence for the offence of aggravated robbery in Section 295C is a death sentence or imprisonment for a term not less than 30 years. It is a tenet of criminal law that where two sentences are imposed for the same offence, the person convicted will be entitled to the lesser of the two sentences. In order to avoid scenarios where suspects, courts and prosecutors will have a dilemma as to which sentence faces a person convicted of the offence of aggravated robbery, we propose that this provision be revised to provide for one sentence.
- e. We note that there are several cases in which some courts have held that there is a conflict between Section 297 which presently provides a sentence for attempted robbery and attempted robbery with violence, vis-à-vis Section 389 which provides a general sentence for attempting an offence where a specific sentence is not provided in the section creating the offence. Even though Section 389 only applies where no specific sentence for the attempted offence is provided, and will therefore not apply for attempted robbery nor attempted aggravated robbery, we propose that the committee considers an amendment to Section 389 for further clarity.

Comments on the Criminal Procedure Code Amendment Bill

- f. We propose the establishment of a Sentencing Council to promote greater transparency and consistency in sentencing and bail/bond decisions, while safeguarding judicial independence. Such councils exist in several common law jurisdictions to address sentencing disparities





across courts, an issue that persists in Kenya despite the 2015 Sentencing Policy.

We attach a proposed amendment to the Criminal Procedure Code to establish the Sentencing Council for the Committee's consideration.

The Judiciary thanks the Committee for this opportunity and remains committed to supporting reforms that advance justice and the rule of law.

Due to prior official commitments, I have nominated Mr Ken Ogutu, Legal Counsel and Co-Chair of the Judiciary – Parliament Liaison Desk, to submit these comments on my behalf during the meeting with JLAC on 2nd July 2026.

Yours sincerely,

HON WINFRIDAH B. MOKAYA, CBS
CHIEF REGISTRAR OF THE JUDICIARY
wmb/ko

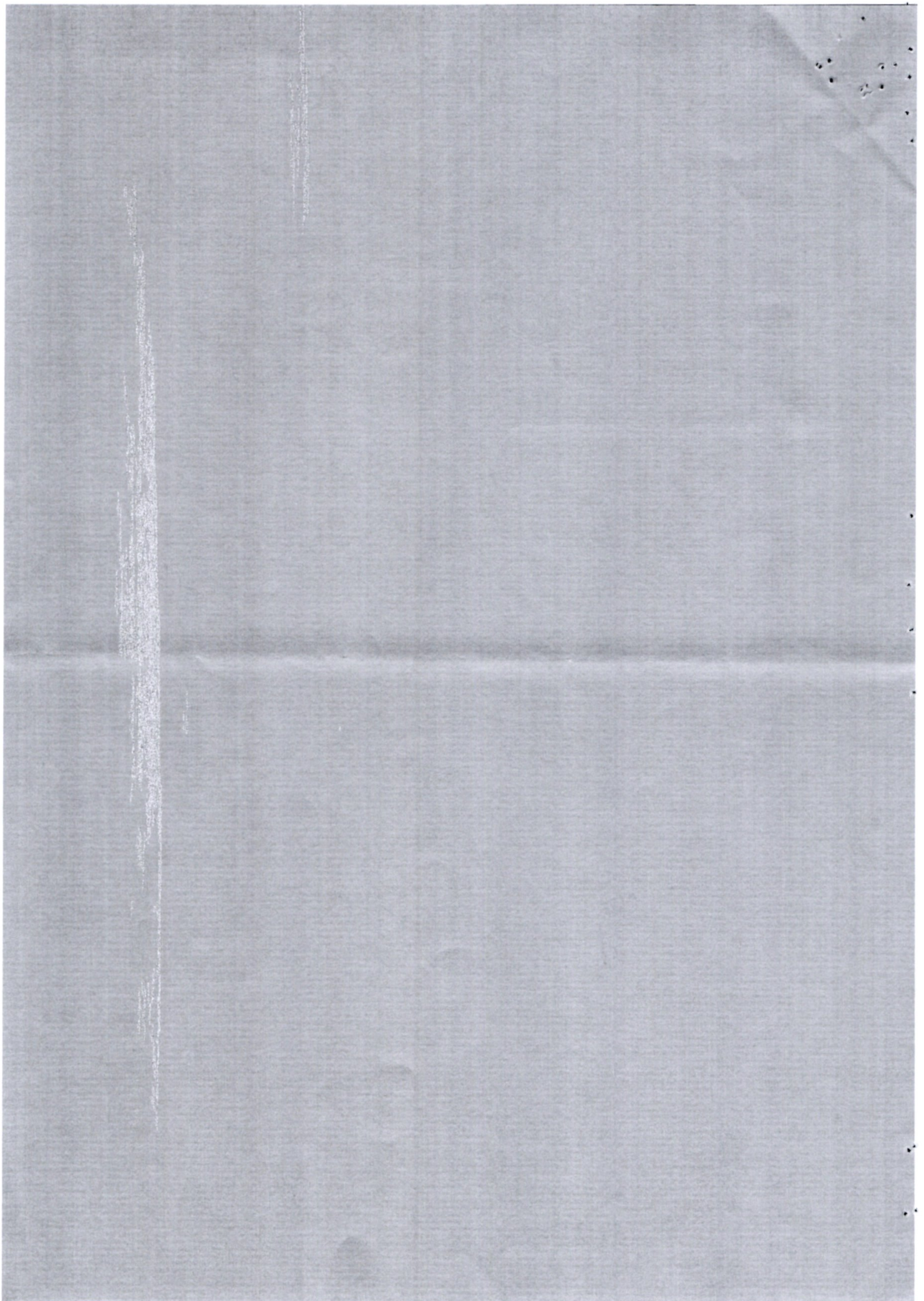
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Insertion of
section 15A in
Cap 75

1. The Criminal Procedure Code is amended by inserting the following new section immediately after section 15—

Sentencing
Council

15A. (1) There is established a council to be known as the Sentencing Council which shall be a body unincorporated.

(2) The council shall consist of—

- (a) a superior court judge nominated by the Chief Justice, who shall be the chairperson;
- (b) one magistrate nominated by the Chief Justice;
- (c) a representative of the Attorney General;
- (d) a representative of the Director of Public Prosecutions;
- (e) a representative of the Inspector-General of Police;
- (f) a representative of the Commissioner General of Prisons;
- (g) a representative of the Director of the Kenya Probation and After Care Service;
- (h) a representative of the Director of Children's Services;
- (i) a representative of the Law Society of Kenya;
- (j) a representative of the Victim Protection Board; and
- (k) one person who teaches law in a public university, nominated by the Deans of the faculties of law of public universities.

(3) The Chief Justice shall nominate a public officer to serve as the Secretary to the Sentencing Council.

(4) The members of the Council shall be appointed for a term of three years and shall be eligible for re-appointment for one further term of three years.

(5) The members of the council shall be nominated in writing by the respective nominating agency and shall be appointed by the Chief Justice by notice in the Gazette.

(6) Not more than two-thirds of the members of the Council shall be of the same gender.



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(7) The Secretariat of the Council shall reside at the Judiciary.

Functions of the Council.

15B. (1) The functions of the Council shall be to promote greater transparency and consistency in sentencing and bail bond decisions, while maintaining the independence of the judiciary.

(2) Without prejudice to the generality of subsection (1), the Council shall be responsible for —

- (a) providing statistical information on bail bond and sentencing, including information on current sentencing and bail bond practices, to members of the judiciary and other interested persons;
- (b) conducting research, and disseminating information to members of the judiciary and other interested persons, on bail bond and sentencing matters;
- (c) developing guidelines on bail bond and sentencing decisions, and monitoring their use;
- (d) assessing the impact of guidelines on sentencing and bail bond practice;
- (e) advising the government on the impact of policy and legislative proposals relating to sentencing and bail bond;
- (f) promoting awareness among the public regarding the realities of sentencing and bail bond; and
- (g) publishing information about sentencing and bail bond practice in the courts.

(3) In discharging its functions under subsection (2), the Council shall—

- (a) consider the impact on victims of sentencing decisions;
- (b) monitor the application of the guidelines; and
- (c) when developing guidelines, promote understanding of, and public confidence in, sentencing and the criminal justice system.



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MEMORANDUM SUBMITTED TO

**NATIONAL ASSEMBLY'S DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS**

ON

**THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 11 OF 2026 AND THE PENAL CODE (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2026)**

SUBMITTED BY:

THE FEDERATION OF WOMEN LAWYERS IN KENYA
AMBOSELI ROAD. GITANGA ROAD, LAVINGTON, NAIROBI

P.O. Box 46324-00100, Nairobi, Kenya

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INTRODUCTION

FIDA-Kenya respectfully submits this Memorandum pursuant to **Article 118 of the Constitution of Kenya, 2010**, which guarantees public participation in parliamentary processes, and in response to the Committee's call for submissions.

As a key stakeholder in advancing constitutionalism, equality, and human rights, FIDA-Kenya is guided by the national values and principles of governance under **Article 10**, including human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, and protection of marginalized groups.

BACKGROUND

FIDA-Kenya is a non-profit, non-partisan organization committed to eliminating discrimination against women in line with **Article 27 of the Constitution**, which guarantees equality and freedom from discrimination. FIDA-Kenya manages legal aid clinics, works extensively on strategic impact litigation, women's rights advocacy and sexual and reproductive health rights.

Our submissions herein are informed by the practical, everyday realities observed within our police stations, courts and lived realities of the women who attend our legal aid clinics. FIDA-Kenya seeks to ensure that as we repeal the Penal Code and its criminal procedural laws, it does not inadvertently roll back protections for women, children, intersex persons and the socio-economically marginalised.

GENERAL POSITION ON THE BILL

FIDA-Kenya welcomes the overall objective of aligning the criminal justice framework with the Constitution and human rights standards but raises firm reservations to specific clauses within the proposed bill that introduce statutory loopholes, threaten women's property and land rights, and ignore survivor-centred standards in sexual and gender-based violence (SGBV) cases. Further, it fails to account for the lived realities of women, especially persons with psychosocial disabilities and fails to address emerging forms of technology-facilitated gender-based violence (TFGBV) and femicide.

FIDA-Kenya therefore supports the reforms and urges the committee to make the amendments that are in line with Articles 27,28,48,49,50 and 53 of the Constitution of Kenya.

CRIMINAL PROCEDURE AMENDMENT BILL, 2026

Clause 8 and 40	BODY SEARCHES OF INTERSEX PERSONS
Provision	27A “Where it is necessary to cause an intersex person to be searched, the search shall, where reasonably practicable, be conducted by a person of the sex which the intersex person shall prefer with strict regard to decency and in such manner s to protect the dignity of the intersex person”
Summary of issue	While the bill recognizes intersex persons and tries to protect their dignity, the wording has a potential loophole. The wording ‘where reasonably practicable’ could qualify human rights violations towards intersex persons. This downplays the right to bodily privacy, body autonomy and dignity and it allows police officers to bypass the preference of the intersex individual by citing administrative inconvenience. This could expose intersex persons to unwanted searches of an opposite or non-preferred sex thus violating fundamental protections against cruel, inhumane and degrading treatment. Most police stations in Kenya lack diverse personnel training and structures to accommodate intersex persons.
Suggested amendment	By deleting the word where <i>reasonably practicable</i> ” and replace with <i>“shall be conducted”</i>
Justification	The Constitution is the paramount law of the land. Article 28 of the Constitution of Kenya (COK) provides the right to dignity, and the same is absolute. The goal is to eliminate claw back clauses, thus ensuring mandatory compliance by police officers and preventing potential sexual harassment, abuse of power and systemic trauma inflicted on intersex persons.

Clause 33 replacing clause 79	TRANSFER OF CASES
Provision	79. “A magistrate may transfer a case of which the magistrate has taken cognizance to any other magistrate with competent jurisdiction to try that case within the local limits of the magistrate’s jurisdiction, whether evidence has been taken in the case or not.”
Summary of issue	This clause fails to consider the impact this has on victims. For victims of Sexual and gender based violence(SGBV) and domestic violence, it can be an emotional turmoil for an unexpected case transfer which could in some occasions involve re-telling traumatic incidences hence revictimizing the victim.

	This structure could potentially disadvantage women from low-income groups and marginalised women whose mobility, time, and financial constraints are highly restricted. Because of the delay in courts, the Chief Justice operationalized the specialized courts, which included SGBV courts to hear and determine these cases within 6 months; thus, transferring the cases will not help in meeting this target.
Suggested amendment	Introducing a condition of transfer “In matters that involve sexual violence, domestic violence and children, the matter should not be transferred without hearing the complainant and the court to put down written reasons confirming that the transfer is necessary and would not cause secondary trauma or prohibitive costs to the victim. “
Justification	This amendment will go in tandem and operationalize Article 48 of the Constitution of Kenya on access to justice and Article 50 of fair trial by centering the victim’s socio-economic and psychosocial well-being. This will also help in abiding to international survivor-centered standards for handling SGBV matters.

Clause 35 Amending section 82	ENTRY OF NOLLE PROSEQUI
Provision	The Director of Public Prosecutions (DPP) shall enter a nolle prosequi with the permission of the court.
Summary of issue	While we applaud the tightening of judicial oversight of the discontinuation of criminal cases, the same is silent on the voice of the victim. Most of the time, SGBV victims discover their matters have been dropped after it has happened. This then leads to thoughts of system failure and corruption by the victim. In other instances, women in domestic abuse are forced/coerced/manipulated into reconciliations without the Judicial officer (JO) assessing their safety and risks, which could be ongoing.
Suggested amendments	“In serious offences such as SGBV and domestic violence, the court shall not grant permission for a nolle prosequi unless it is satisfied that the victim has fully been informed and their views are considered and placed on record”
Justification	In line with survivor-centeredness, it is important to get the views of the victim. It also strengthens Kenya’s state obligation under international instruments such as the Maputo Protocol to ensure women are active protected participants in criminal proceedings that fundamentally impact their survival and safety.

Clause 42 amending section 131(3)	FORFEITURE OF IMMOVABLE PROPERTY
Provision	131(3) "A warrant may be executed within the local limits of the jurisdiction of the court which issued it; and it shall authorize the attachment and sale of the movable property belonging to the person without those limits, when endorsed by a magistrate within the local limits of whose jurisdiction the property is found."
Summary of issue	By dropping the word "movable" property, the interpretation would now mean it's in reference to immovable property, and if that is the case, then it fails to appreciate the unique dynamics affecting women in Kenya. Due to the patriarchal nature of our society, many women only hold beneficial, equitable or matrimonial interests in these properties. Their names do not appear in the title deeds and thus if a male relative absconds court, then the women are left destitute, disposed and homeless together with their children without being heard in court. Our experience through the legal aid clinic is that most of the time, the women find auctioneers at their doorstep to seize the property without any prior.
Suggested amendment	Introduce a sub-clause "Before making the forfeiture order, the court shall issue a mandatory notice to hear the spouse, dependent residing or utilizing the property, if any, before making an order"
Justification	This directly addresses structural discrimination against women's land and property rights, fulfilling the state's mandate under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. (Maputo Protocol).

Clauses 49 and 50 replacing sections 162 & 166	FITNESS TO STAND TRIAL & MENTAL ILLNESS SPECIAL VERDICTS
Provision	This involves the governing procedures for determining an accused's fitness to stand trial and the institutional committal of individuals found not guilty by reason of mental illness.
Summary of issues	This is definitely a plus from previous regimes where individuals would "just" be detained, but there is less

	safeguard on less restrictive alternatives and ongoing periodic reviews. Women with psychosocial disabilities face a high risk of being institutionalized under the criminal procedure. While in there, they are exposed to abuse(sexual) and are separated from their children and families without any safeguards. Because of the cycle of abuse, women can also be disproportionately labeled as “mentally ill” when they act out of trauma, especially from Intimate Partner Violence (IPV).
Suggested amendment	Introduce a timeframe. “Any order for institutionalization under this section shall be subject to automatic judicial review every 6 months, and the court to order the medical assessment to be gender responsive and trauma-informed, taking into account the full consideration any history of domestic violence, abuse or psychosocial factors affecting the accuses- this is for example women convicted of infanticide.
Justification	This ensures we align with the Convention on the Rights of Persons with Disabilities (CRPD) and CEDAW General Recommendation 35 with regard to women navigating trauma within the justice system.

Clause 83 introducing section 395	COMPOSITION OF THE CRIMINAL PROCEDURE RULES COMMITTEE
Provision	This creates a new section which establishes the Criminal Procedure Rules Committee
Summary of issues	The composition fails to incorporate expertise from mental health experts and psychologists, gender justice experts, and human rights experts. The fact that it lacks expertise from key players means it looks “neutral”, but the rules will continue to overlook the invisible barriers, secondary trauma and structural limitations faced by women and vulnerable groups as they go through the criminal justice system.
Suggested amendments	Expand the committee members – could include women’s rights organisations, psychologists, disability organisations etc.
justification	Under Article 27 of the Constitution of Kenya, the state has a duty to address historical marginalization and discrimination

PENAL CODE AMENDMENT BILL, 2026

Clause 11 inserting Section 160A	LIMITATION OF CRIMINAL LIABILITY FOR ABORTION
Provision	160." Any person who unlawfully supplies to or procures for any person any thing whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman whether she is or is not with child, is guilty of a felony and is liable to imprisonment for three years." 160A."it shall not be an offence under section 158,159 or 160 if any person was acting in accordance with the circumstances contemplated under Article 26(4) of the Constitution.
Summary of issues	While it is impressive that we are anchoring reproductive rights within the penal code, we cannot and should not just cross-reference it. Without any clear supportive defences, then we are looking at a lacuna at the implementation stage. We know that most of the time and from case law, women and medical officers often face harassment and arrest based on the circumstances. Reproductive health decisions must be shielded from systemic criminalisations to protect women's bodily autonomy and health, particularly in cases of sexual violence, rape and incest.
Suggested amendments	Amending section 160A to read: 160A. (1)" It shall not be an offence under section 158,159 or 160 if any person was acting in accordance with the circumstances contemplated under Article 26(4) of the Constitution. (2) For the avoidance of doubt, no registered medical practitioner, nurse or clinical officer shall be subjected to criminal prosecution or harassment for providing safe termination of pregnancy under the conditions specified in Article 26(4).
justification	With the addition of the clause, it safeguards the right to health as enshrined in Article 43(1) of the Constitution regarding the right to the highest attainable standard of health, including reproductive healthcare. This further aligns with article 14 of the Maputo Protocol, which mandates state parties to authorize safe abortion to protect women's physical and mental health in instances of sexual violence, rape and incest.

Clause 2 amending section 4	DEFINITIONAL TERM OF LIFE IMPRISONMENT
Provision	The bill amends section 4 to define imprisonment for life as a fixed term of 30 years
Summary of issue	Capping life imprisonment at 30 years fails to take into account the extreme crimes committed. This could include: genocide, SGBV, murder, femicide, defilement and rape. Capping the years at 30 years means that a perpetrator could be released on good behavior and would compromise the safety of the victim after they have served their sentence. We have experienced cases where a perpetrator has been released and has eventually killed the victim.
Suggested amendment	Add a proviso that “imprisonment means 30 years, provided that murder arising out of SGBV, femicide, defilement or sexual violence on vulnerable persons life imprisonment shall mean life imprisonment.”
justification	The proviso still respects judicial authority and discretion while noting the state's due obligation to protect women from systemic violence.

Clause 15-22	ABOLITION OF CRIMINAL DEFAMATION AND LIBEL
Provision	Repeal sections 194-200 abolishing libel and defamation as penal code offences
Summary of issue	While we celebrate the promotion of freedom of expression enshrined in the Constitution of Kenya under Article 33, the removal without other safeguards is not a win for women, especially with the technologically facilitated gender-based violence (TFGBV). In Kenya, female politicians, human rights activists and women in general are frequently victims of non-consensual sharing of images, online campaigns that are malicious and deepfakes, which tend to be a form of character assassination meant to affect them politically. Removing these sections without taking into account the modern age of technology will be a hot spot for continuous online harassment.
Suggested amendment	Add a subsection to include the prevalence of TFGBV.
justification	This ensures the right to privacy for women is safeguarded

CONCLUSION

FIDA-Kenya reiterates that while these amendments are long overdue, it urges the committee to align these reforms on gender equity, human dignity and non-discrimination as enshrined in the Constitution of Kenya and to affirm Kenya's obligations under regional and international human rights instruments, thereby advancing a criminal justice system that is embedded in survivor-centeredness and gender responsiveness.

SUBMITTED BY:

The Federation of Women Lawyers(FIDA)Kenya



MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION
STATE DEPARTMENT FOR INTERNAL SECURITY AND NATIONAL
ADMINISTRATION

SUBMISSIONS ON THE CRIMINAL PROCEDURE CODE (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL NO. 11 OF 2026) AND THE PENAL
CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2026)

Hon. Chair and Members of the Departmental Committee on Justice and Legal Affairs, we thank you for convening this session to discuss the Bills.

Background

1. We note that Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026) has been developed to:
 - a. align the provisions of the Criminal Procedure Code with the Constitution;
 - b. amend the provisions relating to transfer of cases between magistrates, suspended sentences, entering of nolle prosequi, official court language, forfeiture of property, disposal of forfeited goods, and release of exhibits;
 - c. introduce special procedural safeguard for persons with mental illness; and
 - d. enhance proficiency, professionalism, accountability and the effective functioning of the criminal justice system.
2. We also note that the Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026) has been developed to:
 - a. to align its provisions with the Constitution;
 - b. incorporate into it, constitutional principles relating to sentencing;

- c. harmonize the terminologies relating to people with mental illness with the terminologies in the Mental Health Act;
 - d. align provisions on children in conflict with the law with the Children Act, 2022;
 - e. delete obsolete references to detention camps; and
 - f. shift the burden of proof for the offences of incitement to violence to the prosecution as opposed to the accused.
3. The two Bills are, by and large, legally sound and should be passed into law. We applaud the Committee in its efforts geared towards achieving in end. However, we propose the several areas of improvement in the two Bills as shown in the table below.

THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 11 OF 2026

S/No.	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
1	8 (Searching an intersex person)	Where the intersex person refuses to be searched or refuses to identify the sex for the search, a police officer of the rank of an Inspector and above should decide the matter and if the intersex is not satisfied, the matter should be decided by a Magistrate	There are cases where the intersex will not identify the sex for the search and hence the police and the court should have discretion in the matter.

		having jurisdiction to handle the matter.	
2	Clause 33 (Transfer of cases)	Where judgment is pending, the Magistrate who has dealt with the case, should not transfer it to another court unless proper cause is shown.	Litigation is expensive and time consuming and judicial time is to be utilized optimally.
3	Clause 49 (Whether the accused person is mentally fit to stand trial)	a) There should be a right to appeal against the finding that the accused is fit or not fit to stand trial on account of mental illness. b) The accused or his/her family members should also be granted the opportunity to avail their own medical doctor he/she is being examined to determine the issue of his/her fitness to stand trial.	The right of appeal against a decision is central to our criminal jurisprudence and should be preserved. This will promote fairness and confidence in the administration of justice.

4	Clause 52 (Costs in private criminal prosecution)	Costs should not be awarded. They should be dealt with in civil suits arising out of criminal matter.	Assessing costs at the criminal stage does not afford the accused the opportunity to challenge them at a higher court/appellate court.
5	Clause 58 (Inflicting more severe punishment on Children)	This section should be deleted	It is against the spirit of the Children Act which promotes the best interest of children.
6	Clause 80 (Disposal of forfeited goods)	Disposal of such goods should not be limited to the Public Procurement and Asset Disposal Act. Other laws are relevant e.g. Ethics and Anti-Corruption Act and Proceeds of Crime and Anti-Money Laundering Act.	The legal regime for handling forfeited goods is now multi-faced and this should be reflected in the amendments.

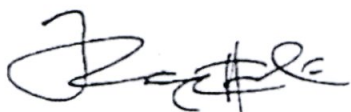
**THE PENAL CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL
NO.12 OF 2026)**

S/No.	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
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1	5 (Term of imprisonment for failure to pay costs or compensation)	A person convicted of an offence should not be imprisoned for failure to pay little sums like Kshs. 2,500 or Kshs. 12,500. In such cases, community services may be imposed.	This will ensure that our prisons are not filled with petty offenders.
2	Clause 25 (Mandatory term of imprisonment for stealing with violence or threatened violence)	The proposed term of imprisonment for the offence is a mandatory 14 years. We propose that this should be the maximum term so as to give judicial officers discretion in sentencing.	A judicial officer's discretion in sentencing should not be unduly fettered.
	Clause 25 (Mandatory term of imprisonment for attempted robbery)	The proposed term of imprisonment for the offence is a mandatory 14 years. We propose that this should be the maximum so as to give judicial officers discretion in sentencing.	A judicial officer's discretion in sentencing should not be unduly fettered.

Conclusion

The said Bills are critical to the effective administration of our criminal justice system and therefore, the State Department supports them save for the areas of improvement suggested.

A handwritten signature in black ink, appearing to read 'Omollo', with a stylized flourish at the end.

DR. RAYMOND OMOLLO, PHD, CBS
PRINCIPAL SECRETARY
INTERNAL SECURITY & NATIONAL ADMINISTRATION

SUBMISSIONS MATRIX ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL.
Submitted to the Departmental Committee on Justice and Legal Affairs, National Assembly



REPUBLIC OF KENYA



NATIONAL COUNCIL FOR CHILDREN'S SERVICES

FORM FOR SUBMISSION OF COMMENTS

THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, 2026 COMMENTS

SUBMISSIONS MATRIX ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL.
Submitted to the Departmental Committee on Justice and Legal Affairs, National Assembly

1.	Court	The Bill replaces the phrase subordinate court with 'Magistrates Court' but fails to include a provision requiring that criminal matters involving a child be transferred to the Children Court	Insert a new Clause requiring that 'notwithstanding the provisions of the Criminal Procedure Code, where a criminal trial involves a child, such a matter shall be referred to the Children's Court referred to under the Children Act, 2022, unless it is otherwise required under any other Statute.	This aligns the provision with the Children Act, 2022 which establishes specialised Children Courts with procedures language and personnel suited to children
2.	Clause 40 (Amendment of Section 120 on persons in charge of closed search	While the Bill inserts an new-Sub-section 5 to cater for a search involving an intersex person but no provision when the search involves a child	Insert a new Subsection 6 as follows 'where the search under this section involves a child, the search shall be conducted in a manner that upholds the dignity and privacy of a child to accord with Article 53 of the Constitution and shall be conducted in the presence of a parent,	This keeps the proposed amendment in line with Section 220 of the Children Act, Cap 141 which calls for the upholding of dignity and privacy of a child during and after an arrest.

SUBMISSIONS MATRIX ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL.
Submitted to the Departmental Committee on Justice and Legal Affairs, National Assembly

			guardian, probation officer, in the presence of an appropriate adult'	
3.	Clauses 49 and 50 (introduction of Sections 162 and 166 on fitness to stand trial	The proposed Section 162 and 166 establish a detailed process on determining an accused person's fitness to stand trial particularly on persons with mental illness but makes no reference to a child	A new provision requiring that where a question of fitness to stand trial involves a child, the court shall (a) ascertain the age of the child (b) ensure that the child is accompanied by a parent, guardian, probation officer or an appropriate adult as the situation may require; (c) consider whether the matter is suitable for diversion in line with Sections 227 to 228 of the Children Act, Cap 141	This aligns the provision with Section 227 and 228 of the Children Act, 2022

SUBMISSIONS MATRIX ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL.
Submitted to the Departmental Committee on Justice and Legal Affairs, National Assembly

4.	Court	The Bill replaces the phrase subordinate court with 'Magistrates Court' but fails to include a provision requiring that criminal matters involving a child be transferred to the Children Court	Insert a new Clause requiring that 'notwithstanding the provisions of the Criminal Procedure Code, where a criminal trial involves a child, such a matter shall be referred to the Children's Court referred to under the Children Act, 2022, unless it is otherwise required under any other Statute.	This aligns the provision with the Children Act, 2022 which establishes specialised Children Courts with procedures language and personnel suited to children
5.	Clause 40 (Amendment of Section 120 on persons in charge of closed search	While the Bill inserts an new-Sub-section 5 to cater for a search involving an intersex person but no provision when the search involves a child	Insert a new Subsection 6 as follows 'where the search under this section involves a child, the search shall be conducted in a manner that upholds the dignity and privacy of a child to accord with Article 53 of the Constitution and shall be conducted in the presence of a parent,	This keeps the proposed amendment in line with Section 220 of the Children Act, Cap 141 which calls for the upholding of dignity and privacy of a child during and after an arrest.

SUBMISSIONS MATRIX ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL.
Submitted to the Departmental Committee on Justice and Legal Affairs, National Assembly

			guardian, probation officer, in the presence of an appropriate adult'	
6.	Clauses 49 and 50 (introduction of Sections 162 and 166 on fitness to stand trial	The proposed Section 162 and 166 establish a detailed process on determining an accused person's fitness to stand trial particularly on persons with mental illness but makes no reference to a child	A new provision requiring that where a question of fitness to stand trial involves a child, the court shall (d) ascertain the age of the child (e) ensure that the child is accompanied by a parent, guardian, probation officer or an appropriate adult as the situation may require; (f) consider whether the matter is suitable for diversion in line with Sections 227 to 228 of the Children Act, Cap 141	This aligns the provision with Section 227 and 228 of the Children Act, 2022

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THE COMMISSION ON ADMINISTRATIVE JUSTICE
(Office of the Ombudsman)



Hata Mnyonge ana Haki

Our Ref: CAJ/LEG/5 (99)

2nd July 2026

Mr. Samuel Njoroge, CBS

The Clerk of the National Assembly
National Assembly, Parliament Buildings
P O Box 41842-00100

NAIROBI

Dear

Mr. Njoroge,

**RE: SUBMISSION ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 11 OF 2026) AND THE PENAL CODE
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2026)**

Receive warm compliments from the Commission on Administrative Justice (Office of the Ombudsman).

The Commission on Administrative Justice (CAJ) appreciates the opportunity accorded by the National Assembly Departmental Committee on Justice and Legal Affairs to present its views on the **Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026)** and the **Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026)**.

The Commission is a member of the National Council on the Administration of Justice (NCAJ) and has been actively represented in the **National Committee on Criminal Justice Reforms (NCCJR)**, the multi-agency committee established under the auspices of the NCAJ to spearhead criminal justice reforms. Through its participation in the NCCJR, the Commission contributed to the consultative process that culminated in the proposed amendments contained in the two Bills.

Having reviewed the Committee's report, the Commission is satisfied that it accurately reflects the proposals developed through the multi-agency consultative process. The proposed amendments are consistent with the Commission's constitutional mandate of promoting administrative justice, good governance, accountability, and the protection of the right to fair

administrative action, while advancing a more efficient, effective, and rights-based criminal justice system.

Accordingly, the Commission on Administrative Justice fully endorses and supports the proposals contained in the **Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 11 of 2026)** and the **Penal Code (Amendment) Bill (National Assembly Bill No. 12 of 2026)** and respectfully urges the Departmental Committee on Justice and Legal Affairs to recommend their adoption by the National Assembly.

The Commission remains available to provide any further technical assistance or clarification that the Committee may require during the legislative process.

We thank you and assure you of our highest regards.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'D. M. Karomo', written over a horizontal line.

D. M. KAROMO

Ag. COMMISSION SECRETARY/CEO



COMMENTS ON THE PROPOSED CRIMINAL PROCEDURE CODE (AMENDMENT)

BILL, 2026

(NATIONAL ASSEMBLY BILL NO. 11 OF 2026)

INTRODUCTION

The Kenya Law Reform Commission (hereinafter “the Commission”) is in receipt of a letter from the Clerk of the National Assembly referenced NA/DDC/JLA/2026/050 dated 24th June, 2026, inviting it to submit written views on the Criminal Procedure Code (Amendment) Bill, 2026 (hereinafter “the Bill”) and to appear before the Departmental Committee on Justice and Legal Affairs (hereinafter “the Committee”) on Thursday, 2nd July, 2026.

The Commission is mandated under section 6(h) of the Kenya Law Reform Commission Act, Cap. 3, to advise the National and County governments on the review and reform of legislation. Pursuant to this mandate, the Commission submits this memorandum for the Committee’s consideration.

BACKGROUND AND CONTEXT

The Criminal Procedure Code (Amendment) Bill was sponsored by Hon. George Gitonga Murugara, MP and is before the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House.

The Bill, 2026 seeks to undertake a comprehensive review of the Criminal Procedure Code (Cap. 75) to align criminal procedure with the Constitution of Kenya, 2010,

subsequent statutory reforms, and developments in the administration of justice. The Bill was published in the Kenya Gazette Supplement No. 62 (National Assembly Bills No. 11) on 13th March 2026 following legislative reform proposals by the National Council on the Administration of Justice (NCAJ).

The Criminal Procedure Code is the principal legislation governing criminal procedure in Kenya. While the Code has undergone piecemeal amendments over the years, several of its provisions still reflect the constitutional and administrative framework that existed before the promulgation of the Constitution of Kenya, 2010. Consequently, many provisions continue to refer to obsolete institutions, outdated terminology, repealed legislation, and criminal procedures that no longer conform to constitutional standards and contemporary human rights principles.

The enactment of the Constitution of Kenya, 2010 fundamentally transformed the country's criminal justice system by introducing an expansive Bill of Rights and constitutional safeguards applicable to all persons within the criminal justice process. Among the most significant constitutional guarantees are the rights to equality and freedom from discrimination (Article 27), human dignity (Article 28), freedom and security of the person (Article 29), privacy (Article 31), protection of property (Article 40), access to justice (Article 48), the rights of arrested persons (Article 49), the right to a fair hearing (Article 50), and the rights of persons detained, held in custody or imprisoned (Article 51). These constitutional provisions require criminal procedure legislation to uphold due process, fairness, accountability, proportionality, and respect for human dignity throughout criminal proceedings.

In addition to constitutional developments, significant legislative reforms enacted after 2010 have rendered several provisions of the Criminal Procedure Code obsolete. These include the High Court (Organization and Administration) Act, the Magistrates' Courts Act, the Mental Health Act, the Public Procurement and Asset Disposal Act, the National Police Service Act, the Sexual Offences Act, and the County Governments Act, among

others. Various institutional changes, including the replacement of provinces and districts with counties and sub-counties, the abolition of subordinate court classifications, the establishment of the Office of the Director of Public Prosecutions as an independent constitutional office, and the abolition of assessors in murder trials, have equally necessitated corresponding amendments to the Criminal Procedure Code.

The Bill therefore seeks not merely to update terminology, but to modernize Kenya's criminal procedure by removing unconstitutional provisions, harmonizing the Code with existing constitutional and statutory frameworks, enhancing procedural efficiency, strengthening judicial oversight, protecting vulnerable persons including intersex persons and persons with mental illness and improving the overall administration of criminal justice.

Broadly, the Bill introduces reforms in several thematic areas. These include replacing obsolete institutional terminology, repealing unconstitutional preventive security proceedings, reforming procedures relating to accused persons with mental illness, strengthening safeguards surrounding prosecutorial discontinuance of criminal proceedings (*nolle prosequi*), introducing protections for intersex persons during searches, modernizing criminal court procedures through the use of technology, updating language provisions to include Kenya Sign Language, regulating the disposal of forfeited property and release of exhibits, and establishing a Criminal Procedure Rules Committee to facilitate continuous procedural reform.

Overall, the Criminal Procedure Code (Amendment) Bill, 2026 represents one of the most extensive reforms of Kenya's criminal procedural law since the promulgation of the Constitution of Kenya, 2010. Its overarching objective is to ensure that criminal procedure fully reflects constitutional values, protects fundamental rights and freedoms, promotes efficiency within the criminal justice system, and aligns the Criminal Procedure Code with contemporary legal and institutional realities.

LEGAL AND CONSTITUTIONAL FRAMEWORK

The Bill, is principally anchored on the Constitution of Kenya, 2010, which ushered in a transformative constitutional order founded on the national values and principles of governance under Article 10, the rule of law, constitutional supremacy, and a robust Bill of Rights. As the primary legislation governing criminal procedure in Kenya, the Criminal Procedure Code must be interpreted and applied in a manner that gives effect to constitutional rights and freedoms and advances the values enshrined in the Constitution.

The Bill gives effect to several constitutional provisions that directly govern the administration of criminal justice. Article 27 guarantees equality before the law and prohibits discrimination on any ground, thereby requiring criminal procedures to afford equal protection and treatment to all persons, including vulnerable groups such as intersex persons and persons with mental illness. Article 28 guarantees every person's inherent dignity and the right to have that dignity respected and protected, a principle reflected in the proposed provisions governing searches of intersex persons and the treatment of accused persons with mental illness.

Article 29 safeguards the freedom and security of the person by prohibiting arbitrary deprivation of liberty and cruel, inhuman or degrading treatment or punishment. This constitutional protection informs the repeal of provisions that permitted preventive detention based merely on suspicion and the replacement of outdated procedures that allowed persons with mental illness to be detained indefinitely at the pleasure of the President.

The Bill also advances Article 31 on the right to privacy by strengthening procedural safeguards in criminal proceedings, including the conduct of searches and the protection of victims in sexual offence proceedings. Article 40, which guarantees the right to property, underpins the proposed provisions relating to the forfeiture of property and the release of exhibits to their lawful owners following the conclusion of criminal proceedings.

Further, the proposed amendments reinforce Article 48 on access to justice by promoting efficient criminal procedures and eliminating obsolete procedural barriers. Article 49, which sets out the rights of arrested persons, informs the proposed repeal of provisions permitting criminal proceedings to be initiated through procedures that no longer conform to constitutional standards governing arrest, charging and fair process.

Central to the Bill is Article 50, which guarantees every accused person the right to a fair hearing. The proposed reforms concerning fitness to stand trial, the treatment of accused persons with mental illness, judicial oversight over the entry of a *nolle prosequi*, transfer of criminal cases, court language, and the use of technology in recording proceedings are all intended to strengthen the fairness, integrity and efficiency of criminal proceedings.

The Bill also gives effect to Article 51, which guarantees the rights of persons detained, held in custody or imprisoned by ensuring that criminal procedure accords such persons humane treatment and access to appropriate legal and medical safeguards.

Beyond the Constitution, the Bill harmonizes the Criminal Procedure Code with several statutes enacted after the promulgation of the Constitution. These include the High Court (Organization and Administration) Act, which establishes the office of the Registrar of the High Court; the Magistrates' Courts Act, which abolished the historical classification of subordinate courts into first and second class courts; the Mental Health Act, which introduces a modern legal framework for the treatment and protection of persons with mental illness; the National Police Service Act; the Sexual Offences Act; the County Governments Act; and the Public Procurement and Asset Disposal Act. The amendments therefore eliminate obsolete statutory references and ensure consistency within Kenya's legislative framework.

The Bill is also informed by Kenya's broader constitutional commitment to a human rights-based criminal justice system. By aligning criminal procedure with constitutional guarantees, contemporary statutory reforms and evolving principles of due process, the

proposed amendments seek to strengthen judicial accountability, enhance procedural fairness, protect vulnerable persons, and promote the efficient administration of criminal justice.

ANALYSIS AND RECOMMENDATIONS

The Commission has conducted a clause-by-clause analysis of the Bill and makes the following specific proposals and recommendations.

	Clause	Issue Identified	Proposed Amendment	Justification
1.	Clause 1 – Short Title	In agreement.	In agreement.	No proposed amendment to the short title.
2.	Clause 2 – Interpretation	Section 2 contains outdated definitions and lacks definitions for vulnerable persons recognized under the Constitution and recent legislation.	Amend the definitions of Registrar of the High Court and summary trial, and introduce definitions of intersex person and person with mental illness.	Harmonises the Criminal Code with the High Court (Organization and Administration) Act, the Magistrates' Courts Act and the Mental Health Act. To align with the Constitutional provisions such as the right to equality, dignity and non-discrimination under Articles 27 and 28 of the Constitution.
3.	Clause 3, 4, 5,	Numerous	Replace the term	Harmonises the

No.	Clause identified	Proposed Amendment	Justification	
	6, 9, 36, 41, 43, 44, 45, 55, 57, 63-78,81	provisions still refer to "subordinate court", terminology that no longer reflects the judicial structure established under the Constitution and the Magistrates' Courts Act.	"subordinate court" with "magistrate's court" in Section 3,4, 5,6,9, 14, 36, 41, 43, 44, 45, 55, 57, 63-78 and 81 of the Criminal Procedure Code.	Criminal Procedure Code with Article 169 of the Constitution and the Magistrates' Courts Act and modernises statutory terminology without altering the jurisdiction of the courts.
5.	Clause 7	Section 15 still recognises corporal punishment as a sentencing option and does not prescribe the duration of the operational period for suspended sentences.	In agreement. Delete the reference to corporal punishment and provide that the operational period of a suspended sentence shall not exceed the term of the sentence imposed.	Aligns the Criminal Code with Article 29 of the Constitution, which prohibits corporal punishment, and introduces certainty in the administration of suspended sentences.
6.	Clause 8	The Criminal Procedure Code lacks procedures governing the search of intersex persons.	Insert a new section 27A prescribing the manner in which a search on an intersex person should be conducted by a person of the sex which the intersex person shall	The proposal protects the dignity, privacy and equality of intersex persons by requiring, where reasonably practicable, that searches be

	Clause	Issue Identified	Proposed Amendment	Justification
			prefer	conducted by a person of the preferred sex and with strict regard to decency. It gives effect to Articles 27, 28 and 31 of the Constitution.
7	Clause 10-29	Sections 43–61A permit preventive proceedings requiring persons to execute bonds for keeping the peace or good behaviour based merely on suspicion rather than proof of criminal conduct.	Repeal sections 43–61A of the Criminal Procedure Code.	The provisions have long been criticized for permitting restrictions on personal liberty without a criminal trial. Their repeal aligns criminal procedure with Articles 27, 29, 49 and 50 of the Constitution by strengthening due process and protecting against arbitrary deprivation of liberty.
8	Clause 30	Section 67 of the Criminal Procedure Code refers to the obsolete administrative	Amend section 67 by replacing the words "province or district" with "county or sub-county."	Aligns the Criminal Procedure Code with Article 6 of the Constitution and the County Governments Act,

No.	Clause	Issues identified	Proposed Amendment	Justification
		units of "province" and "district," which were abolished following the promulgation of the Constitution of Kenya, 2010 and the establishment of devolved government.		which recognize counties and sub-counties as the applicable administrative units. The amendment modernizes statutory terminology and ensures consistency with Kenya's devolved system of government.
9	Clause 31	Section 68 still refers to the term "district," an administrative unit that no longer exists under the Constitution.	Amend section 68 by replacing the word "district" with "county."	Harmonizes the Criminal Procedure Code with the constitutional framework on devolution and ensures statutory consistency with the current administrative structure.
10	Clause 32	Section 77 refers to repealed provisions of the Penal Code governing sexual offences, creating inconsistency	Amend section 77 by replacing references to sections 140, 141, 145, 166 and 167 of the Penal Code with a reference to the Sexual Offences Act.	To align with the Sexual Offences Act

	Clause	Issue Identified	Proposed Amendment	Comments
		with the current substantive law.		
11	Clause 33	Section 79. The existing provisions governing the transfer of criminal cases between magistrates contain outdated references to obsolete court classifications.	Repeal and replace section 79 to provide that a magistrate may transfer a case to another magistrate with competent jurisdiction within the local limits of jurisdiction, whether evidence has been taken or not.	Modernizes the transfer of criminal cases, removes obsolete terminology, and enhances administrative efficiency while preserving jurisdictional safeguards.
12	Clause 34	In agreement.	In agreement.	No proposed amendment.
13.	Clause 35	Section 82 permits the entry of a nolle prosequi without expressly requiring leave of the court, contrary to Article 157(8) of the Constitution.	Amend section 82 to require that a nolle prosequi may only be entered with the permission of the court.	Gives effect to Article 157(8) of the Constitution, which prohibits the Director of Public Prosecutions from discontinuing criminal proceedings without the permission of the court. The courts have consistently recognized that prosecutorial discretion is subject

No.	Clause	Issue	Proposed Amendment	Justification
				to constitutional oversight and cannot be exercised arbitrarily. The amendment therefore codifies the constitutional position by expressly requiring judicial approval before a <i>nolle prosequi</i> can be entered.
14	Clause 37, 38,39, 42,46,47,48, 51, 52, 53,54,56,59,60,62	In agreement.	In agreement.	No proposed amendment.
15	Clause 40	Section 120 does not provide safeguards regarding the execution of search warrants against intersex persons.	Insert a new subsection providing that where the person to be searched is an intersex person, the provisions of the proposed section 27A shall apply.	The amendment operationalizes the protections introduced under Clause 8 by ensuring that searches conducted pursuant to court-issued warrants respect the dignity, privacy and bodily autonomy of intersex persons. It gives effect to

No.	Issue Identified	Proposed Amendment	Justification	
			Articles 27, 28 and 31 of the Constitution and reflects a human rights-based approach to criminal procedure. There is presently no direct Kenyan judicial authority on searches involving intersex persons, making this an important legislative development.	
16	Clause 49	Section 162 is repealed. The proposed amendments on determining an accused person's fitness to stand trial should clearly provide the procedure for psychiatric assessment, the burden and standard for raising the issue, periodic review where a person is found unfit,	Amend by repealing the clause to expressly provide for: (i) prompt psychiatric/psychological assessment by qualified experts; (ii) periodic judicial review of a finding of unfitness; (iii) the least restrictive measures consistent with public safety; and (iv) resumption of proceedings where fitness is regained.	The right to a fair trial under Article 50 requires that an accused person be capable of understanding the proceedings and participating meaningfully in their defense. Equally, Articles 25(c), 28, 29 and 51 require that a person found unfit should not be subjected to indefinite detention without judicial

No.	Clause	Issue Identified	Proposed Amendment	Justification
		and safeguards against indefinite detention.		oversight. Kenyan courts have criticized prolonged detention of accused persons on account of mental illness without periodic review, emphasizing that criminal procedure must respect dignity and due process.
17	Clause 50	Section 166 is repealed by establishing special finding of "not guilty by reason of mental illness," including the orders available to the court, review mechanisms and the rights of the affected person.	Amend the clause to require the court to recommend treatment, supervision or discharge orders based on medical evidence and proportionality, with mandatory periodic review by the court. References to automatic or indefinite detention should be removed.	A special finding should balance public safety, the rights of victims, and the constitutional rights of the accused. Detention following such a finding should not be punitive but necessity and subject to judicial supervision. This approach aligns with Articles 25(c), 27, 28, 29, 47 and 50 of the Constitution.

		Issue Identified	Proposed Amendment	Justification
18	Clause 58	Section 221 (1) is amended by deleting and substituting by replacing obsolete references to a "subordinate court of the first class" with "magistrate's court" and to provide where a magistrate considers a convicted person deserving of a sentence beyond his or her sentencing jurisdiction, the offender may be committed to another magistrate's court with competent jurisdiction for sentence. However, the clause does not expressly provide procedural safeguards	Amend the clause to require the committing court to record written reasons for forming the opinion that a higher sentence may be warranted and to afford the convicted person an opportunity to be heard before the order of committal is made. The clause should also clarify that the receiving court exercises an independent sentencing discretion after considering mitigation and all relevant sentencing principles.	While the amendment correctly aligns with the Criminal Procedure Code with the current judicial hierarchy, procedural fairness under Articles 25(c), 47 and 50 of the Constitution requires transparency and an opportunity to be heard before a matter is transferred solely for sentencing. Sentencing is a judicial function requiring individualized consideration of the offender and the circumstances of the offence. The superior court has emphasized that fair trial rights extend to the sentencing phase and that reasons for judicial decisions are an essential

No.	Clause	Current Text	Proposed Amendment	Justification
		governing such committal, including the accused person's right to be heard before transfer and the obligation to record reasons.		component of fair administrative and judicial action. Requiring recorded reasons and preserving the receiving court's independent discretion promotes accountability, consistency in sentencing and compliance with constitutional standards.
19	Clause 61	Section 280 is amended by repealing and substituting therefore anew section. While the amendment streamlines criminal proceedings by allowing the court to enter a plea of not guilty where an accused stands mute, it retains outdated and	Amend the clause to: (a) replace the terms "stands mute of malice," "unsound mind," and "infirmity" with rights-based, person-centred language consistent with the Constitution and the disability rights framework; (b) require the court, before entering a plea of not guilty, to satisfy itself that the accused understands the charge and has been afforded reasonable opportunity. (c) provide that a	The proposed amendment should reflect Articles 27, 28, 50 and 54 of the Constitution, which guarantee equality, dignity, the right to a fair trial and the rights of persons with disabilities. A refusal or inability to plead may arise from language barriers, hearing or speech impairments, intellectual or

No.	Clause	Existing Law	Proposed Amendment	Rationale
		potentially stigmatizing terminology such as "stands mute of malice," "unsound mind," and "infirmity." The clause also does not require the court to make reasonable inquiries into whether the accused understands the charge, requires interpretation, communication assistance or other accommodations before entering the plea.	finding that the accused is incapable of making a defense shall be based on competent medical or psychological evidence in accordance with section 166.	psychosocial disabilities, or other communication challenges rather than deliberate refusal. Courts are therefore required to ensure that an accused person is afforded reasonable opportunity accommodation before proceeding. These amendments would align the Criminal Procedure Code with constitutional values, the principles of fair trial, and Kenya's obligations under the United Nations Convention on the Rights of Persons with Disabilities.
20	Clause 80	Section 389A is amended by inserting new section immediately after the section.	The forfeited goods or property should be disposed of in compliance with the Public Procurement and Assets Disposal Act.	The rationale is to align the proposal with the already existing sets of laws to avoid overlap and enhance

		Issue Identified	Proposed Amendment	Justification
		The proposed sections establish a procedure for disposing of forfeited property and releasing exhibits to their owners after conclusion of criminal proceedings.		transparency, accountability and public confidence in the handling of court exhibits.
21	Clause 83	Amend section 394 to insert a new section, 395 to establish Criminal Procedure Rules Committee.	Amend the clause to: (a) include a representative of legal aid providers and persons with expertise in victims' rights and the rights of persons with disabilities;	The Committee will exercise delegated legislative authority in prescribing criminal procedure. Consequently, its composition should reflect the broad spectrum of stakeholders in the criminal justice system.

GENERAL OBSERVATIONS

The Commission acknowledges and commends Hon. George Gitonga Murugara, and the National Assembly for the legislative initiative embodied in this Bill. The Bill represents a significant step towards aligning the Criminal Procedure Code (Cap. 75) with the Constitution of Kenya, 2010 and subsequent legislation. The Commission supports these efforts and encourages continuous review of laws to ensure that it remains responsive to developments.

Constitutional compliance

The Commission recommends that all procedural reforms be guided by the constitutional principles of fairness, equality, human dignity, access to justice and due process.

Rights-Based Approach

Certain provisions relating to accused persons with mental illness or psychosocial disabilities remain obsolete thus potentially stigmatizing. The Commission recommends the adoption of person-centered and rights-based language throughout the Criminal Procedure Code, consistent with the Constitution and Kenya's international obligations, including the United Nations Convention on the Rights of Persons with Disabilities.

Procedural Fairness

Several amendments confer procedural powers on courts without expressly prescribing the safeguards that should accompany the exercise of those powers. Where judicial discretion is expanded, the Bill should require courts to record reasons for their decisions, afford affected persons an opportunity to be heard where appropriate, and ensure that such decisions remain subject to review or appeal in accordance with the law.

Consistency with Existing Legislation

The Commission notes that the Bill appropriately harmonizes several provisions of the Criminal Procedure Code with the Constitution, the existing legislation, including the Magistrates' Courts Act and the Public Procurement and Asset Disposal Act.

CONCLUSION

The Commission recommends that Parliament considers the proposed recommendations in order to align with the Constitutional requirements.

The Commission remains committed to supporting legislative reforms that promote constitutionalism, the rule of law, access to justice, and the fair, efficient and effective administration of criminal justice in Kenya.



4 May 2026

Clerk of National Assembly
P.O. Box 41842 - 00100
Main Parliament Building
Parliament Road
Nairobi
cna@parliament.go.ke

Sent via e-mail

Dear Sir,

Re: Memorandum on the Criminal Procedure Code (Amendment) Bill, 2026 (National Assembly Bill No. 14 of 2026)

Introduction

Katiba Institute (KI) is a research and public interest litigation institution established in 2011 to promote knowledge and understanding of Kenya's Constitution and constitutionalism, defend the Constitution, and facilitate its implementation.

Reprieve UK is an international human rights organisation that works to end the death penalty and challenge severe human rights abuses through litigation, advocacy, research, and partnerships with local actors. In Kenya, Reprieve's Resentencing Project was established following the 2017 Supreme Court decision that declared the mandatory death penalty unconstitutional, opening the door for thousands of prisoners to seek resentencing.

This joint memorandum represents views by KI and Reprieve UK on the Criminal Procedure Code (Amendment) Bill, 2026 (National Assembly Bill No. 14 of 2026).

Recommendations

The proposed amendments are welcome in order to comply with the Constitution, human rights standards and harmonizing with other laws as well as comply court decisions.

A clear legislative framework for resentencing within the amended Criminal Procedure Code is necessary to give full legal effect to the resentencing framework introduced under the 2023 Sentencing Policy Guidelines. While the Guidelines represent an important step toward promoting individualized, proportionate, and rights-compliant sentencing, they are inherently advisory in nature and cannot, on their own, confer jurisdiction, create enforceable rights, or establish binding

procedural standards. This creates a structural gap that only statutory reform can adequately address.

First, the absence of explicit legislative provisions on resentencing undermines legal certainty and consistency. Courts are currently compelled to rely on constitutional interpretation and evolving jurisprudence to reopen concluded cases, particularly in the post-*Muruatetu* context. This has led to divergent approaches across courts regarding eligibility, applicable principles, and procedural thresholds. Codifying resentencing procedures would harmonize judicial practice, ensuring that similarly situated applicants are treated equally and that sentencing outcomes are not dependent on judicial discretion alone.

Second, legislative provisions are essential to define jurisdiction and procedural safeguards. A statutory framework would clarify which courts are empowered to hear resentencing applications, the timelines within which such applications may be brought, the rights of applicants (including legal representation and access to mitigation), and the role of victims in the process. Without this clarity, resentencing remains procedurally uncertain, risking inefficiency, delay, and potential violations of fair trial rights.

Third, embedding resentencing in legislation reinforces compliance with constitutional and human rights standards, particularly the right to a fair trial, dignity, and freedom from cruel, inhuman, or degrading punishment. The move away from mandatory sentences toward individualized sentencing requires a mechanism to revisit sentences imposed under now-discredited frameworks. Legislative backing ensures that this process is not discretionary or ad hoc, but a structured and rights-based remedy available to all eligible persons.

Fourth, statutory recognition strengthens the legitimacy and enforceability of the Sentencing Policy Guidelines themselves. Without legislative anchoring, the Guidelines risk uneven application or judicial reluctance in their implementation, especially where reopening finalized cases is involved. A Criminal Procedure Code amendment would signal clear legislative intent to operationalize resentencing as an integral component of sentencing reform.

Finally, a codified resentencing regime promotes efficiency and judicial economy. By establishing standardized procedures and criteria, courts can process applications more systematically, reducing backlog and avoiding repetitive constitutional litigation on similar issues. It also provides clarity to legal practitioners, correctional institutions, and affected individuals, thereby improving access to justice.

In sum, legislative provisions on resentencing are not merely complementary but necessary to translate the normative aspirations of the 2023 Sentencing Policy Guidelines into a coherent, enforceable, and fair system. Without such provisions, resentencing remains fragmented, uncertain, and potentially inequitable.

Recommended New Provisions

In light of the foregoing, we suggest that The Criminal Procedure Code is amended by inserting the following new Part:

RESENTENCING PROCEEDINGS

A – Interpretation

In this Part, unless the context otherwise requires—

“Resentencing” means a judicial rehearing on sentence following conviction where the original sentence was imposed pursuant to a mandatory sentencing provision;

“Sentencing court” means the court that last imposed or affirmed the sentence.

B – Right to resentencing

1. A person convicted of an offence and sentenced pursuant to a mandatory death penalty shall be entitled to apply for resentencing.
2. Without prejudice to subsection (1), a person sentenced to death under a mandatory provision of law shall be entitled to a resentencing hearing for purposes of mitigation and the imposition of an individualized sentence.
 - a. Eligibility for resentencing under this section shall apply notwithstanding:
That the sentence has been commuted to life imprisonment or any other term of imprisonment;
 - b. That the person has exhausted any rights of appeal; or
 - c. The date on which the conviction or sentence was imposed.
4. For the avoidance of doubt, the commutation of a mandatory sentence shall not extinguish or limit the right to apply for resentencing.
5. This section shall be applied in a manner consistent with the Constitution and binding decisions of the Supreme Court.

C – Nature of resentencing hearing

1. A resentencing hearing shall be conducted as a de novo sentencing proceeding.
2. In conducting a resentencing hearing, the court shall:
 - a. Receive and consider fresh mitigating (pre and post-conviction) and aggravating evidence;
 - b. Consider the circumstances of the offence and the offender; and
 - c. Impose a sentence that is proportionate and individualized.
3. The court shall not be limited to the record of the trial court and may admit any relevant evidence necessary to achieve a just sentence.
4. In determining sentences under this section, the court shall be guided by applicable sentencing principles and guidelines and shall expressly consider the purposes of sentencing, including retribution, deterrence, rehabilitation, restorative justice, community protection and denunciation.

D – Jurisdiction of the sentencing court

1. A resentencing application shall be heard and determined by the sentencing court.
2. Where the Court of Appeal is the sentencing court, it shall have jurisdiction to conduct a resentencing hearing.
3. In exercising jurisdiction under subsection (2), the Court of Appeal:
 - a. Shall hear and determine the matter as a court of first instance for purposes of sentencing; and
 - b. May receive fresh evidence relevant to sentence.
4. Notwithstanding subsection (3), the Court of Appeal may, where it considers it appropriate in the interests of justice:
 - a. Remit the matter to the High Court for resentencing; and
 - b. Give such directions as may be necessary for a fair and expeditious hearing.

E – Exhaustion of the right to resentencing

1. The right to resentencing shall be deemed to have been exercised only where:
 - a. The applicant has been afforded an opportunity to present fresh mitigating evidence; and
 - b. A court has conducted a resentencing hearing and imposed a sentence based on an individualized assessment.
2. The following shall not constitute exhaustion of the right to resentencing:
 - a. An appeal against conviction or sentence;
 - b. The confirmation, variation or substitution of sentence on appeal without a rehearing on mitigation;
 - c. Commutation of sentence by the Executive;
 - d. Proceedings for mercy or clemency; or
 - e. Any other proceeding that does not involve a resentencing hearing under this Part.
3. No person shall be barred from applying for resentencing on the ground that any process referred to in subsection (2) has been undertaken or concluded.

F – Procedural safeguards

1. In every resentencing hearing, the court shall ensure:
 - a. The right of the applicant to be heard;
 - b. Access to legal representation; and
 - c. The availability of relevant reports including probation or social inquiry reports and mental health assessment reports where necessary.
2. The court shall provide written reasons for the sentence imposed, setting out the factors and principles considered in arriving at the sentence.

A decision under this Part shall be subject to appeal in accordance with this Code.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Criminal Procedure Code (Cap. 75) to establish a clear statutory framework governing resentencing proceedings arising from convictions where mandatory sentences were imposed.

Following the decision of the Supreme Court in *Francis Karioko Muruatetu & Another v Republic* and subsequent directions of the Court, Kenyan jurisprudence has affirmed the constitutional requirement for individualized sentencing and the consideration of mitigating factors. However, the absence of a comprehensive statutory framework has resulted in inconsistency in the treatment of resentencing applications, including uncertainty regarding jurisdiction, eligibility, and procedure.

This Bill seeks to address these gaps.

First, the Bill codifies the **right to resentencing** for persons sentenced under mandatory penalty provisions and clarifies that such right subsists notwithstanding commutation of sentence or exhaustion of appellate remedies.

Second, the Bill defines the **nature of resentencing proceedings** as de novo hearings, requiring courts to consider fresh mitigating evidence and impose individualized and proportionate sentences consistent with constitutional principles and sentencing guidelines.

Third, the Bill clarifies the **jurisdiction of the Court of Appeal**, providing that where it is the sentencing court, it may conduct resentencing as a court of first instance, while retaining the discretion to remit matters to the High Court where appropriate.

Fourth, the Bill defines the **scope and exhaustion of the right to resentencing**, making clear that appeals, commutations, and clemency processes do not substitute for a proper resentencing hearing and do not extinguish the right.

Finally, the Bill provides for **procedural safeguards**, including the right to be heard, access to legal representation, and the requirement for reasoned sentencing decisions.

The inclusion of this section to this Bill will promote consistency, fairness and constitutional compliance in sentencing, and strengthen the administration of justice in line with evolving jurisprudence.

1. Proposed Amendment to Section 28(a): Transitional Application of Sentencing Provisions

Section 28(a) of the Bill currently provides that the Act shall not affect *“the liability or trial of a person, or the punishment of a person under any sentence passed, in respect of any act done or commenced before the commencement of this Act.”*

Section 28(a) of the Bill currently preserves the pre-existing legal framework by providing that the Act shall not affect liability, trial or punishment in respect of acts committed before its commencement. In effect, this excludes a large category of individuals those already in the system or already sentenced from benefiting from reforms that Parliament has deemed necessary and just.

Maintaining the current formulation would:

- Perpetuate the application of sentencing provisions that Parliament has already determined to be excessive, disproportionate, or inconsistent with constitutional standards;
- Create unjust disparities between individuals sentenced before and after commencement, despite being similarly situated;
- Undermine the corrective and reformatory purpose of the Bill, particularly in relation to the abolition of mandatory sentencing frameworks and the promotion of individualized sentencing; and
- Lead to continued litigation, as affected persons seek constitutional remedies to access relief that could otherwise be clearly provided for in statute.

Proposed Amendment

To give full effect to the reform objectives of the Bill, Section 28(a) be revised as follows:

28(a) Notwithstanding any other provision of this Act, where this Act introduces a lesser penalty, removes a mandatory sentence or otherwise provides a more favourable sentencing framework than that applicable at the time of sentencing, a person who is serving a sentence imposed before the commencement of this Act may apply to the court of competent jurisdiction for resentencing in accordance with this Act.

28(b) This section shall not operate to automatically reopen concluded appeals or invalidate convictions lawfully entered before the commencement of this Act. a resentencing proceeding under this section is a distinct statutory remedy and is separate and independent from any appellate proceedings. For the avoidance of doubt the fact a person has exhausted or is otherwise precluded from pursuing appellate remedies shall not, of itself, constitute a bar to an application for resentencing under this section.

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Yours sincerely,

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**MINISTRY OF INTERIOR AND
NATIONAL ADMINISTRATION**
State Department for Correctional
Services

**SUBMISSIONS ON THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL,
2026**

Clause	Proposed Amendment	Justification
Clause 2 Amendment of Section 2 (Interpretation)	1. Insert the following additional definition— <i>"Correctional facility" means an institution used to detain persons who are in the lawful custody of the State, whether accused persons awaiting trial or convicted criminal prisoners serving a sentence, and includes a prison established or deemed to have been established under section 24 of the Prisons Act (Cap. 90) and a youth corrective training centre established under section 66 of the Prisons Act (Cap. 90);</i> 2. Insert a definition of— <i>"Officer in Charge of a Correctional Facility" to mean—an officer appointed under the Prisons Act to be responsible for the administration of a correctional facility.</i> 3. Replace outdated references throughout the Criminal Procedure Code to— <i>"keeper of prison"</i> With <i>"Officer in Charge of a Correctional Facility"</i> where appropriate.	a) Harmonizes with existing legislation b) Aligns with modern correctional terminology
8 Insertion of new section 27A – Mode of searching	Insert the following clause: <i>27A. Whenever it is necessary to cause an intersex person to be searched, the search shall where</i>	Balances the dignity of intersex persons with the operational and security obligations of correctional institutions.

an intersex person	<i>reasonably practicable be conducted by a person of the sex which the intersex person shall prefer with strict regard to decency and in such manner as to protect the dignity of the intersex person unless exceptional circumstances relating to operations, safety or security render this impracticable, in which case the reasons shall be recorded.</i>	Ensures that the exception remains narrowly tailored and is invoked only where compliance is genuinely impracticable, such as in emergencies, imminent threats to safety or security, or where operational exigencies make immediate compliance impossible. The requirement to record reasons in writing promotes transparency, accountability and oversight, safeguards against arbitrary or discriminatory exercise of discretion, and facilitates administrative or judicial review where necessary.
49 Repeal and Replacement of Section 162 – Fitness to Stand Trial	1. <i>Insert a new subsection providing that:</i> <i>"Where the court orders that an accused person be committed to a mental health facility for assessment or treatment, the National Police Service shall be responsible for conveying the accused person from court to the mental health facility unless the accused person is already lawfully committed to a correctional facility, in which case the Kenya Prisons Service shall facilitate the transfer in accordance with the law."</i> 2. <i>Insert a subsection requiring that:</i> <i>"The medical officer shall submit the assessment report to the court within fourteen days unless, for good cause shown, the court extends the period."</i>	a) Enhances operational efficiency. b) Protects constitutional rights c) Enhances coordination between the Judiciary, the National Police Service, mental health facilities and the Kenya Prisons Service.

	3. <i>Insert a subsection providing that:</i> <i>"Where proceedings are adjourned on account of an accused person's mental illness, the court shall review the matter at intervals not exceeding ninety days."</i> 4. Insert a requirement that every order committing an accused person to a mental health facility be transmitted promptly to the receiving facility and, where applicable, the Officer in Charge of the correctional facility.	
50 Repeal and Replacement of Section 166 – Special Finding of Not Criminally Responsible by Reason of Mental Illness	1. Insert a requirement that the court, when determining the appropriate placement of the accused, consider: • the nature of the offence; • the risk posed to the public; • the medical assessment; • the availability of appropriate treatment facilities; and • public safety. 2. Require the medical officer in charge of the mental health facility to submit periodic reports to the court at intervals not exceeding six months on the patient's condition and suitability for continued treatment or discharge. 3. Require the court to notify	a) Enhances judicial oversight, b) Protects constitutional rights. c) Facilitates efficient correctional administration.

	the Kenya Prisons Service immediately where an order affects a person already committed to prison custody, to facilitate lawful transfer or release.	
53 Introduces amendments relating to the recording of evidence and recognises the use of modern technology in criminal proceedings.	Insert a provision to the effect that: <i>"Certified electronic copies of warrants of commitment, production orders, release orders and other judicial directions transmitted through an approved secure electronic system shall have the same legal effect as the original document."</i>	Respond to adopting electronic case management systems within the criminal justice system. KPS receives and executes a high volume of warrants and court orders. Express statutory recognition of secure electronic transmission would: • reduce delays in admission and release of prisoners; • minimise the risk of forged warrants; • improve inter-agency coordination; and • enhance efficiency in sentence administration.
83 Establishment of the Criminal Procedure Rules Committee	1. Expand the membership of the Committee to include: • <i>the Commissioner General of Prisons or a designated representative;</i> 2. Empower the Committee to prescribe standard forms for: • warrants of commitment; • warrants of production; • release warrants; • transfer warrants;	a. Incorporate Kenya Prisons Service as a principal criminal justice institution responsible for implementing court orders to provide expertise necessary for developing practical procedural rules. b. Uniform documentation would reduce errors in sentence administration, facilitate interoperability among criminal justice

	• electronic transmission of warrants; and • sentence computation forms.	agencies and improve the efficiency of prison operations.
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COMMENTS ON THE PENAL CODE (AMENDMENT) BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 12 OF 2026)

Clause	Proposed Amendment	Justification
5 Amendment of Section 28 (Imprisonment in Default of Payment of Fine)	Insert a proviso requiring the sentencing court, before committing an offender to imprisonment in default of payment of a fine, to consider: • the offender's financial circumstances; • the availability of instalment payments where permitted by law; and • any other lawful alternatives to immediate imprisonment.	Courts should assess an offender's ability to pay before imposing imprisonment in default of a fine to ensure proportionality, reduce unnecessary admissions to correctional facilities, and uphold the constitutional principles of fairness and equality before the law.
6 Amendment of Section 40 (Treason)	Provide that the sentencing court shall have discretion to impose: <i>"Imprisonment for life or such other appropriate sentence as the court considers just, having regard to the circumstances of the offence and the offender."</i>	KPS supports the removal of the mandatory death sentence as it aligns with the constitutional principle of individualized sentencing recognised in Francis Karioko Muruatetu & Another v Republic . However, prescribing a rigid mandatory minimum term may still unduly restrict judicial discretion. A discretionary framework allows courts to impose proportionate sentences while preserving the seriousness of the offence.
7 Amendment of	Replace the proposed penalty with: <i>"A person convicted under this</i>	The Kenya Prisons Service supports abolishing the

Section 60 (Administration of Unlawful Oaths)	<i>section shall be liable to imprisonment for life or to such lesser sentence as the court may determine having regard to the circumstances of the offence and the offender."</i>	mandatory death sentence while preserving judicial discretion to impose proportionate, individualized sentences consistent with constitutional principles.
11 Insertion of New Section 160A	Insert a proviso stating: <i>"The defence shall only apply where the act is carried out by a person authorised by law and in accordance with applicable professional standards and statutory requirements."</i>	While KPS supports harmonisation with Article 26(4) of the Constitution, the defence should not be framed so broadly as to permit reliance on it by persons acting outside the law or without the requisite professional authority.
25 Amendment Relating to Robbery Offences	Insert a subsection requiring the sentencing court to consider: • the degree of violence used; • the value of the property stolen; • whether a weapon was used; • the extent of injuries sustained by the victim; • the offender's criminal history; and • prospects for rehabilitation.	These factors promote consistency in sentencing and ensure that punishment reflects the gravity of the offending conduct.
25 Robbery with Violence	Replace the prescribed sentence with: <i>"A person convicted under this section shall be liable to imprisonment for life or such other sentence as the court considers appropriate having regard to the circumstances of the offence and the offender."</i>	The proposed amendment preserves judicial discretion while recognising the gravity of robbery with violence. It is consistent with the constitutional principles of individualized sentencing articulated by the Supreme Court in Francis Karioko Muruatetu & Another v Republic , while ensuring that courts retain the ability to impose severe penalties in the most serious cases.
25 Attempted	Provide that sentencing courts should distinguish between:	A differentiated approach promotes proportionate

Robbery with Violence	• attempts involving actual violence; • attempts involving threats of violence; and • attempts that are interrupted before violence occurs.	sentencing by reflecting the varying degrees of harm and culpability in attempted offences.
26 Transitional Provisions	Insert a subsection providing that: <i>"Persons serving sentences imposed under provisions amended by this Act may apply to the sentencing court or such other court as may be prescribed by law for resentencing in accordance with this Act."</i>	The amendment provides a clear statutory framework for resentencing applications and promotes equality before the law by ensuring that persons sentenced under the former mandatory regime have access to the benefits of the new sentencing framework.
28 Saving Provisions	Clarify that: • convictions lawfully entered before the commencement of the Act remain valid; and • only the sentence may be reconsidered where authorised by law.	This avoids unnecessary challenges to convictions while preserving the right to seek resentencing where appropriate.



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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Ref: ODPP/CONF/2/15A

Date: 3rd August, 2026

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

Dear Mr. Njoroge,

RE: SUBMISSION OF COMMENTS BY THE OFFICE OF THE
DIRECTOR OF PUBLIC PROSECUTIONS ON THE CRIMINAL
PROCEDURE CODE (AMENDMENT) BILL, NATIONAL
ASSEMBLY BILL NO. 11 OF 2026, AND THE PENAL CODE
(AMENDMENT) BILL, NATIONAL ASSEMBLY BILL NO. 12 OF
2026

Reference is made to your letter Ref. NA/DDC/JLAC/2026/051 dated
14th July 2026, inviting the Office of the Director of Public Prosecutions
(ODPP) to present its views on the Criminal Procedure Code and Penal Code
(Amendment) Bills, 2026.

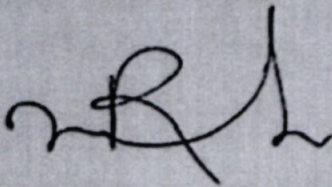
The Office has reviewed the Bills and hereby submits its comments and
recommendations to the National Assembly. The submissions are presented
in matrix format outlining the specific clauses, proposed amendments, and

the rationale for each recommendation in accordance with the committee's guidance.

Kindly find attached herewith the detailed submissions.

The ODPP remains committed to supporting the legislative process and ensuring that all reforms uphold Constitutional principles and values, as well as the rule of law.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'R. Ingonga', written over a horizontal line.

RENSON M. INGONGA, CBS, OGW
DIRECTOR OF PUBLIC PROSECUTIONS

MEMORANDUM ON THE PROPOSED AMENDMENTS TO THE CRIMINAL PROCEDURE CODE, CAP 75

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
Section 171 A judge of the High Court or a magistrate of a subordinate court of the first or second class who acquits or discharges a person accused of an offence may, if the prosecution for the offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, order the private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit:	Clause 52 amending Section 171 2. Section 171 of the principal Act is amended- (a) in subsection (1), A judge of the High Court or a magistrate who acquits or discharges a person accused of an offence may, if the prosecution for the offence was originally instituted <i>on a summons or warrant issued by a court</i> on the application of a private prosecutor, order the private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit:	Delete "<i>on a summons or warrant issued by a court</i>" For the section to read: A Judge of the High Court or a magistrate who acquits or discharges a person accused of an offence may, <i>if the prosecution for the offence was originally instituted on the application of a private prosecutor</i>, order the private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit:	- Criminal proceedings under the Constitutional dispensation are instituted by way of filing a charge sheet before court. Hence, the section needs to be aligned to the Constitution.

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
Provided that— (i) the costs shall not exceed twenty thousand shillings in the High Court or ten thousand shillings in the case of an acquittal or discharge by a subordinate court;	Provided that- (i) the costs shall not exceed twenty thousand shillings in the High Court or ten thousand shillings in the case of an acquittal or discharge by a magistrate's court;	Second proposal to enhance the amount from Ksh. 20, 000 to 50, 000 and from 10, 000 to 20, 000 respectively Provided that- (i) the costs shall not exceed fifty thousand shillings in the High Court or twenty thousand shillings in the case of an acquittal or discharge by a magistrate's court;	- Enhancing the amount from twenty thousand to fifty thousand and from ten thousand to twenty thousand factors in the expenses incurred by the accused person in attending to the prosecution and the cost of inflation.
Section 363 (3) If a subordinate court acting under subsection (1) considers that a finding, sentence or order of the court of lower class is illegal	Clause 75(2) that seeks to amend section 363 (2) If a <i>presiding</i> magistrate or <i>head of the court station</i> acting under subsection (1) considers that a finding, sentence or order	Remove the word <i>presiding</i> in “presiding magistrate” and <i>head of station</i> for the section to read as follows:	In practice, any magistrate can refer a matter to the High Court for revision.

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court.	of the magistrate's court is illegal or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court	<i>If a magistrate acting under subsection (1) considers that a finding, sentence or order of the magistrate's court is illegal or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court</i>	
No provision, new insertion proposed	Clause 80 that seeks to amend section 389B The principal Act is amended by inserting the following new sections immediately after section 389A Insertion of new section 389B in Cap. 75 Disposal of forfeited goods.	Delete "Chief Registrar" and substitute with the State for the section to read as follows: Where, on the order of a court, goods and other forms of property are to be forfeited to the State, such goods and property shall be disposed of by the State in	- Exhibits are forfeited to the State and not to the Judiciary (Separation of Powers) - Disposal of exhibits by Judicial officers may create a conflict of interest where the judiciary has adjudicated a matter and given an order of forfeiture.

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
	Where, on the order of a court, goods and other forms of property are to be forfeited to the State, such goods and property shall be disposed of by the Chief Registrar in accordance with Part XIV of the Public Procurement and Asset Disposal Act.	accordance with Part XIV of the Public Procurement and Asset Disposal Act.	- A separation of functions is necessary for objectivity to be maintained. - Various statutes vest powers of disposal of forfeited exhibits to different agencies.
No provision, new insertion proposed	Clause 80 which seeks to amend Section 389C. Unless forfeited, all exhibits produced in court shall remain the property of their proprietors and shall, upon proof of such proprietorship, be released to them after judgment unless an appeal has been preferred in	We propose to delete the proviso provided that in appropriate cases, nothing shall prevent a court from ordering the release of such exhibits to their proprietors at any other stage of the trial and insert a new proviso as follows:	The proviso is likely to be abused or to interfere with the trial and the administration of justice in serious cases when exhibits are released before being produced.

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
	which case they shall be released after the determination of the appeal or where no appeal has been filed upon expiry of the time allowed for filing the appeal <i>provided that in appropriate cases, nothing shall prevent a court from ordering the release of such exhibits to their proprietors at any stage of the trial.</i>	<i>provided that in cases where the goods are perishable in nature or in danger of being destroyed or diminishing in value, nothing shall prevent a court from ordering the release of such exhibits to their proprietors at any stage of the trial.</i> We also propose the inclusion of a proviso on illegal goods as follows: <i>b) Illegal exhibits including contraband and unaccustomed goods, once produced as exhibits shall not be returned to the proprietor, whether or not they have been convicted of any offence.</i>	

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
Section 2 "prosecutor" means a public prosecutor or a person permitted by the court to conduct a prosecution under section 88 of the Act; "Public prosecutor" means the Director of Public Prosecutions, a Prosecution Counsel, a person appointed under section 85 or a person acting under the direction of the Director of Public Prosecutions;	Section 2 (Interpretation Section) pg. 315 Prosecutor" means a public prosecutor or a person permitted by the court to conduct a prosecution under section 88 of the Act;	We propose to amend the definition of a 'prosecutor' to align with the provisions Section 2(1) of the ODPP Act and to read as follows: <i>"prosecutor" means a person appointed under section 29 and 30 as a prosecutor and shall include Private Prosecutors; "public prosecutor" means the Director and such other persons exercising the delegated powers of the Director under Article 157(9) of the Constitution.</i>	To align with the definition of prosecutor as per the ODPP ACT.

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
162. Inquiry by court as to soundness of mind of accused (1) **When in the course of a trial or committal proceedings the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defense, it shall inquire into the fact of unsoundness. (2) If the court is of the opinion that the accused is of unsound mind and consequently incapable of	Clause 49 which seeks to amend Section 162 162. (1) This section shall apply where, in the course of criminal proceedings against an accused person, a question arises, at the instance of the defense, the prosecution, the court or any other person, as to whether or not the accused person is fit to be tried. (2) An accused person shall be deemed to be unfit to be tried if such person is unable, by reason of mental illness, to understand the nature or course of the	We propose that: Section 162 (1)(2)(3) as in the principal Act be maintained as is. Section 162 (4) and (5) in the principal Act be deleted. Subsection 1 and 2 of the proposed provision in the bill may be retained.	-deletion of Sections 162(4) and (5) for reasons that they were declared unconstitutional, null and void by Mrima J. in <i>Kimaru & 17 Others v Attorney General & Another</i>. - Section 162 (1), (2) and(3) in the principal Act adequately addresses legal issues of suspects with mental illness.

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
making his defense, it shall postpone further proceedings in the case. ** Powers delegated to the Cabinet Secretary and to the Principal Secretary of the Ministry for the time being responsible for prisons, by L.N. 579/1963. (3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance before the court	proceedings so as to- (a) plead to the charge; (b) instruct a legal representative; (c) make a proper defense; or (d) understand the evidence. (3) Where an accused person is before court being tried or is to be tried, any question as to whether or not such person is fit to be tried shall be determined by the court. (4) For the purposes of determining whether or not to exercise a power under subsection (3), the court- (a) for that purpose, may commit an		

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
or such officer as the court may appoint in that behalf. (4) If the case is one in which bail may not be taken, or if sufficient security is not given, the court shall order that the accused be detained in safe custody in such place and manner as it may think fit, and shall transmit the court record or a certified copy thereof to the Cabinet Secretary for consideration by the President. (5) Upon consideration of the record the President may	accused person to a mental health facility for a period of not more than fourteen days; (b) shall direct that the accused person concerned be examined by a qualified mental health practitioner in the mental health facility. (5) Within the period of committal authorized by the court under subsection (4), the medical officer in charge of the mental health facility shall report to the court on whether, in his or her opinion, the accused person committed under subsection (4)(a), is a person with mental illness and is in need of inpatient care or		

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
by order under his hand addressed to the court direct that the accused be detained in a mental hospital or other suitable place of custody, and the court shall issue a warrant in accordance with that order; and the warrant shall be sufficient authority for the detention of the accused until the President makes a further order in the matter or until the court which found him incapable of making his defense orders him to be brought before it again in the manner provided by sections 163 and 164.	outpatient care or treatment in a mental health facility. (6) Where the court determines that an accused person is unfit to be tried that court shall <u>adjourn the proceedings until further order</u>, and may- (a) if the court is satisfied, having considered the evidence of a medical officer adduced pursuant to subsection (5) and any other evidence before it, that the accused person is a person with mental illness and is in need of inpatient treatment in a mental health facility, <u>commit the accused person to a specified mental health facility</u>; (b) if the court is satisfied,		

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	having considered the evidence of a medical officer adduced pursuant to subsection (5) and any other evidence before it, that the accused person is a person with mental illness and is in need of outpatient care or treatment in a mental health facility, make such order as the court may deem fit in relation to the accused person for outpatient care or treatment in a mental health facility: Provided that the court may release the accused person on bail on sufficient security being given that the accused person will be properly taken care of and prevented from doing injury to themselves or any other person, and for securing		

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	attendance before court or such other officer as the court may appoint in that behalf; or (c) where the court determines that the accused person is fit to be tried, the proceedings shall continue. (7) Where, on the trial of an accused person, a question arises as to whether or not the person is fit to be tried and the court, after hearing the prosecution, considers it is expedient and in the interests of the accused so to do, the court may defer consideration of the question until any time before opening the case for the defense and if, before the question falls	- Delete entire subsection 7	- Section 7 as proposed would be unconstitutional in so far as the trial proceeds with an accused person who does not comprehend the

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	to be determined, the court returns a verdict in favor of the accused person or finds the accused person not guilty, as the case may be, on the count or each of the counts on which the accused is being tried, the question shall not be determined and the person shall be acquitted. (8) Upon a determination having been made by the court that an accused person is unfit to be tried, the court may, on application to it in that behalf, allow evidence to be adduced before it as to whether or not the accused person did the act alleged and if the court is satisfied that there is a reasonable		proceedings. There can not be any expedient explanation to circumvent a Constitutional procedure.

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	doubt as to whether the accused did the act alleged, the court shall order the accused to be <u>discharged</u>. (9) Where evidence is adduced before the court under subsection (8) but the court decides not to order the accused person to be discharged, no person shall publish a report of the evidence or decision until such time, if any, as- (a) the trial of the accused person concludes; or (b) a decision is made not to proceed with the trial of the person or the trial is otherwise not proceeded with.		

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	(10) A person who contravenes the provisions of subsection (9) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.	- Delete entire sub section 10	- The Criminal Procedure Code being a procedural statute cannot prescribe offences.

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
166. Defense of lunacy adduced at trial (1) Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of that person for that offence that he was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the person is tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to the effect that the accused was guilty of	Section 50 (Amendment of 166) The principal Act is amended by repealing section 166 and substituting therefor the following new section Special finding of not guilty. 166. (1) Where an accused person is tried for an offence and the court finds that the accused person committed the offence or made the omission alleged against him or her and, having heard evidence relating to the mental condition of the accused person, finds that- (a) the accused person was a person with mental illness at the time; and (b) the mental	The DPP proposes that this section outlines the procedure in handling an accused person with mental illness in the following manner: 1. An inquiry should be done by court that includes calling the evidence of a doctor and other witnesses, who will be taken through a trial within a trial to establish whether the finding of insanity by the medical officer is legitimate. 2. The prosecutor and defense must be given an opportunity to participate in the inquiry.	- The procedure outlined in the DPP's proposal addresses the issue of the mental capacity of the accused person. -Both the prosecution and the defense have an opportunity to satisfy themselves as to the legitimacy of the finding that the accused person is not fit to stand trial. -The proposal gives suggestions on how to handle an accused person who is unlikely to get better and stand trial as well as one who will recover and can be tried.

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
the act or omission charged but was insane when he did the act or made the omission. (2) When a special finding is so made, the court shall report the case for the order of the President, and shall meanwhile order the accused	illness was such that the accused person ought not to be held responsible for the act or omission alleged by reason of the fact that the accused- (i) did not know the nature or consequences of the act or omission; (ii) did not know that what the accused person was doing was wrong; or (iii) was unable to refrain committing omission, from the act or the court shall return a special finding to the effect that the accused person is <u>not guilty by reason of inability to understand the nature or consequences of his or her acts or omissions.</u>	3. In the event that the suspect is found to be incapable of standing trial by virtue of his mental illness, the court shall make that finding and will revert the matter back to the DPP who will then give directions on the prosecution of the case. 4. A social inquiry report shall be prepared to guide the DPP on the modes of disposal of the case. 5. Where it is established, the suspect suffers from an incurable or degenerative mental illness, the DPP shall make an application in to	-The DPP proposes where the accused person can be placed or accommodated in accordance with the right to dignity and security of the person. -The Mental Health Act, Cap 248 Section 2D (1)(d), (e) and (f) proposes provision of resources, facilities, services and personnel to cater to persons with mental illness. We propose that steps are taken to operationalize mental facilities under the mental act with special facilities to cater for the said persons. - This proposal cures the issue of disposal of accused persons adjudged guilty but insane, who cannot continue being imprisoned

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to be kept in custody in such place and in such manner as the court shall direct. (3) The President may order the person to be detained in a mental hospital, prison or other suitable place of safe custody. (4) The officer in charge of a mental hospital, prison or	(2) The court shall commit a person to a specified mental health facility for a period of not more than fourteen days and direct that during such period the person be examined by the medical officer in charge of the mental health facility. (3) The court may, on application, after consultation with the medical officer in charge of the mental health facility, extend the period of committal under subsection (2), but the period or the aggregate of the periods for which an accused person may be committed shall not exceed six months.	the court for the suspect be discharged. 6. In the event that the accused person makes a recovery and is capable of standing trial, the DPP may consider the interests of the victim, the interests of the Community and the public interest in determining whether or not to proceed with the prosecution. 7. The social inquiry report should also inform on whether the accused has family or welfare support for appropriate placement and follow up. 8. In the event that the suspect has no family,	in the mental hospital forensic wings. 2. For Outpatient Patients; Establish whether the family is willing to take them in which can be done through probation reports. 3. Introduce the term State patient, which refers to a legal and medical term for a person restricted in a secure psychiatric facility by a court order because they have a mental illness and cannot stand trial or were not found criminally liable for an offence).

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other place in which a person is detained by an order of the President under subsection (3) shall make a report in writing to the Cabinet Secretary for the consideration of the President in respect of the condition, history and circumstances of the person so detained, at the expiration of a period of three years from the date of the President's order and thereafter at the expiration of each period of two years from the date of the last report.	(4) Within the period of committal authorized by the court under subsection (2), the medical officer in charge of the mental health facility shall report to the court on whether, in his or her opinion, the accused person committed under subsection (2) has mental illness and is in need of inpatient care or treatment in a mental health facility.	social or welfare support, the DPP shall make an application to the Court for the court to declare the accused a state patient and proceed to give appropriate placement orders in consideration of the accused persons right to inherent dignity and security of his person. 9.	

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(5) On consideration of the report, the President may order that the person so detained be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit. (6) Notwithstanding the subsections (4) and (5), a person or persons thereunto empowered by the President may, at any time after a	(5) If the court, having considered any report submitted to it and such other evidence as may be adduced before it, is satisfied that an accused person found not guilty by reason of inability to understand the nature or consequences of his or her acts or omissions pursuant to subsection (1) as mental illness and is in need of inpatient care or treatment in a mental health facility, the court shall commit that person to a specified mental health facility.		

PROVISION IN STATUTE	PROVISION IN THE BILL	ODPP'S PROPOSED AMENDMENT	JUSTIFICATION
person has been detained by order of the President under subsection (3), make a special report to the Cabinet Secretary for transmission to the President, on the condition, history and circumstances of the person so detained, and the President, on consideration of the report, may order that the person be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the			

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public, as the President thinks fit. (7) The President may at any time order that a person detained by order of the President under subsection (3) be transferred from a mental hospital to a prison or from a mental hospital, or from any place in which he is detained or remains under supervision to either a prison or a mental hospital.			
	Section 163(2)	To retain the DPP's powers on decision regarding whether the proceedings against someone continues or otherwise.	The DPP informs whether the proceedings against someone continues or otherwise as per Article 157 of the constitution.
	Clause 83 that seeks to amend section 395 (2)	Delete	

Recommendations

206. Non-appearance of parties after adjournment (1) If, at the time or place to which the hearing or further hearing is adjourned, the accused person does not appear before the court which made the order of adjournment, the court may, unless the accused person is charged with felony, proceed with the hearing or further hearing as if the accused were present, and if the complainant does not appear the court may dismiss the charge with or without costs.	New amendment to Section 206 (1)	To delete the words '<i>unless the accused person is charged with felony</i>', for the section to read as follows: 206. Non-appearance of parties after adjournment (1) If, at the time or place to which the hearing or further hearing is adjourned, the accused person does not appear before the court which made the order of adjournment, the court may proceed with the hearing or further hearing as if the accused were present, and if the complainant does not appear the court may dismiss the charge with or without costs.	For this section to conform with Article 50 (2) (f) to allow the prosecution and court to proceed in absentia where the accused persons make it difficult to proceed trial by virtue of their deliberate absence. This balances the rights of the victim to have a fair hearing as well. Refer to the case of R v Tetero (Criminal Case no. 2 of 2017 [2023])
137O. Rules under this sub-Part the			

Attorney-General may make rules for the better carrying into effect the provisions of this Part and such rules shall apply mutatis mutandis to prosecutions conducted under section 88 of the Act.	New Amendment proposed by the ODPP- replace the Attorney General with the Director of Public Prosecutions	The Director of Public Prosecutions may make rules for the better carrying into effect the provisions of this Part and such rules shall apply mutatis mutandis to prosecutions conducted under section 88 of the Act.	It is only the DPP who has the mandate to operationalize Section 137O of the CP and not the AG who has no mandate in criminal matters.
Section 386(1)	None	Delete Minister under the principal Act to be substituted with the officers of the Independent Policing Oversight Authority	IPOA is mandated to conduct investigations of death occurring at police stations under unclear circumstances.
Section 394	None	Delete Minister under the principal Act to be substituted with the Judiciary and ODPP	It is the Judiciary and the ODPP mandated to make rules regarding criminal procedure