

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 SEP 2025	DAY: Tuesday
TABLED BY: Hon. Eric Karemba, CBS, MP (Chairperson, public Petitions)	 HARAMBEE
CLERK-AT-THE-TABLE: A. Shibuko	

*Approved
SWA
23/9/25*

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

PARLIAMENT
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THIRTEENTH PARLIAMENT - FOURTH SESSION - 2025

PUBLIC PETITIONS COMMITTEE

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REPORT ON-

CONSIDERATION OF PUBLIC PETITION NO. 74 OF 2023 BY MR. CHARLES OCHOLA OSANGO, REGARDING ENACTMENT OF A BANKERS PROFESSIONAL BILL

SEPTEMBER, 2025

Directorate of Audit, Appropriations & General-Purpose Committees
Clerk's Chambers
Main Parliament Buildings
NAIROBI

NATIONAL ASSEMBLY
RECEIVED
23 SEP 2025
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

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KBA - Kenya Bankers' Association,

KIB - Kenya Institute of Bankers

FBA - Kenya Forex Bureau Association

CBK - Central Bank of Kenya

KLRC - Kenya Law Reforms Commission

CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present this House with the Report of the Public Petitions Committee regarding Public Petition No. 74 of 2023 by Mr. Charles Ochola Osango, regarding the enactment of a Bankers Professional Bill. The Petition was presented to the House pursuant to Standing Order No. 225 (2) (a) by Rt. Hon. (Dr.) Moses F.M. Wetang'ula, EGH, MP, on behalf of the petitioner.

The Petitioner prayed that the Committee recommend the enactment of the Bankers Professional Bill, which will establish a comprehensive legislative framework that will regulate licensing and certification for qualified individuals with the necessary expertise and ethical conduct to practice banking, as well as address consumer protection, fair lending practices, transparency, and dispute resolution mechanisms.

In consideration of the Petition, the Committee collected the views from the Kenya Bankers' Association, the Central Bank of Kenya, and the Kenya Law Reforms Commission.

The Committee observed that banking is not a profession but a business comprising over forty diverse disciplines; therefore, attempts to professionalize banking through statutory means will create regulatory duplication and barriers to the industry. The Committee notes that banking is an industry with various disciplines; hence, enactment of the proposed legislation would duplicate the roles of other professional bodies. Therefore, the Committee rejected the enactment of the proposed legislation.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support offered during the consideration of the Petition. The Chairperson expresses gratitude to the Members of the Committee and the Secretariat for their devotion and commitment to duty during the consideration of the Petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to table the report on the consideration of Public Petition No. 74 of 2023 by Mr. Charles Ochola Osango, regarding the enactment of a Bankers Professional Bill before the House.

Signed: _____



Date: _____

23/09/2025

HON. MUCHANGI KAREMBA, CBS, M.P.

CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

PART ONE

1. PREFACE

1.1 Establishment and Mandate of the Committee

The Public Petitions Committee was established under the provisions of Standing Order 208A with the following terms of reference—

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.

1.2 Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises the following Members:

Chairperson

Hon. Muchangi Karemba, CBS, M.P.
Runyenjes Constituency

United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, CBS, M.P.
Turbo Constituency

United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency

United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency

United Democratic Alliance (UDA)

Hon. Beatrice Kadeveresia Elachi, M.P.
Dagoreti North Constituency

Orange Democratic Movement (ODM)

Hon Suzanne Ndunge Kiamba, MP
Makueni Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Ntwiga Patrick Munene, M.P.
Chuka Igambang'ombe Constituency

United Democratic Alliance (UDA)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere South Constituency
Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South
Jubilee Party (JP)

Hon. Peter Irungu Kihungi, M.P.
Kangema Constituency
United Democratic Alliance (UDA)

Hon. John Bwire Okano, M.P.
Taveta Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency
Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency
United Democratic Alliance (UDA)

1.3 Committee Secretariat

The secretariat comprises the following:

**Mr. Leonard Machira
Principal Clerk Assistant II**

**Ms. Anne Shibuko
First Clerk Assistant**

**Ms. Miriam Modo
First Clerk Assistant**

**Mr. Willis Obiero
Clerk Assistant III**

**Mr. Benard Kipchumba
Clerk Assistant III**

**Ms. Patricia Gichane
Legal Counsel II**

**Ms. Nancy Ouma
Research Officer III**

**Ms. Roselyne Njuki
Principal Serjeant-at-Arms**

**Mr. Paul Shana
Serjeant-at-Arms**

**Mr. Calvin Karungo
Media Relations Officer III**

**Mr. Peter Mutethia
Audio Officer**

PART TWO

2. BACKGROUND TO THE PETITION

2.1 Introduction

1. Public Petition No. 74 of 2023 regarding the enactment of the Banker's Professional Bill, 2023 was presented to the House on 30th November, 2023, by the Rt. Hon. (Dr.) Moses F.M. Wetang'ula, EGH, MP, Speaker of the National Assembly, on behalf of Mr. Charles Ochola Osango, representing banking professionals in Kenya.
2. The Petitioner acknowledged the roles of the Kenya Bankers' Association (KBA), the Kenya Institute of Bankers (KIB), and the Kenya Forex Bureau Association (FBA), as well as their primary objective of promoting excellence and professionalism within the banking sector through the provision of relevant training, research, and advocacy.
3. In addition to the existing associations, the Petitioner was convinced that the industry requires the establishment of a robust legislative framework that regulates the norms and standards of banking professionals in Kenya, thus ensuring professionalism, integrity, and accountability of bankers in safeguarding the interests of customers and promoting public trust.
4. The Petitioner explained that the impetus is a result of the collapse of Imperial Bank in 2015, following fraudulent activities. Investigations disclosed that the top management of the bank, including its former CEO, was implicated in a massive fraud scheme that involved concealing non-performing loans, creating fictitious accounts, and siphoning funds from depositors.
5. Consequently, the bank was closed, and its depositors and investors incurred significant losses. Thereafter, concerns were raised about corporate governance in the banking sector.

2.2 Petitioner's Prayers

6. The Petitioners prayed that the National Assembly, through the Public Petitions Committee, enact the Bankers Professional Bill, which will establish a comprehensive legislative framework that will regulate licensing and certification for qualified individuals with the necessary expertise and ethical conduct to practice banking, as well as address consumer protection, fair lending practices, transparency, and dispute resolution mechanisms.

PART THREE

3.0 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 Petitioners

The Petitioner, Mr. Charles Ochola, appeared before the Committee on Tuesday, 10th September, 2024, and submitted as follows—

7. He informed the Committee that the banking sector plays a vital role in the country's economy by ensuring that the banking profession upholds the highest standards of professionalism, competency, and ethical conduct. Hence, there is a need for a comprehensive legislative framework that addresses the concerns and enhances the integrity of the banking industry.
8. Further, despite the existence of the Kenya Bankers Association, Kenya Institute of Bankers and the Kenya Forex Bureau Association, which promote excellence and professionalism within the banking sector through the provision of relevant training, research, and advocacy. There was no legislation regulating the norms and standards of banking professionals in Kenya.
9. He submitted that the banking industry adds value to the national economy by serving as a backbone for financial transactions, savings, investments, and overall economic stability. Therefore, the petitioner argued that it is imperative to establish a robust legislative framework to ensure professionalism, integrity, and accountability of bankers and to safeguard the interests of customers and promote public trust.
10. He further stated that in 2015, Imperial Bank, a mid-sized Kenyan bank, collapsed following revelations of fraudulent activities. The revelations disclosed that the top management of the bank, including its former CEO, was implicated in a massive fraud scheme that involved concealing non-performing loans, creating fictitious accounts, and siphoning off funds from its depositors.
11. Consequently, the bank was closed, its depositors and investors incurred significant losses, and they raised concerns about corporate governance in the banking sector.
12. He argued that the enactment of the Bankers Profession Bill would establish a comprehensive legislative framework that addresses these concerns and enhances the integrity of the banking industry.
13. Further, the proposed Bill would introduce comprehensive regulations and standards for the banking profession. It would also emphasize the importance of licensing and certification, ensuring that only qualified individuals with the necessary expertise and ethical conduct are allowed to practice banking in Kenya. In addition to providing mechanisms for consumer protection, it addresses issues such as fair lending practices, transparency, and dispute resolution.

3.2 Kenya Bankers Association

The Acting Chief Executive Officer of Kenya Bankers Association, Mr. Raimond Molenje, appeared before the Committee on Tuesday, September 10, 2024 and submitted as follows -

14. He informed the Committee that the proposed Institute of Bankers Professional Bill would hinder and limit economic growth, employment opportunities and wealth creation for individuals, households, and businesses.
15. In this regard, he informed the Committee that the Kenya Bankers Association opposed the enactment of the Bill in its entirety based on the following:
 - a. Banking is not a profession; it is a business/ industry, and sector, as clearly defined in Section 2 of the Banking Act, Cap 488, Laws of Kenya.
 - b. The banking industry comprise of staff from over 50 different professions including cyber security, engineers, ICT, lawyers, human resource, accountants, procurement, economists, compliance, insurance, audit, credit, customer service, data science, sales, marketing, religious, surveyors, logistics among others most of which are already regulated by their primary professional bodies such as the Law Society of Kenya (LSK), Institute of Human Resource Management (IHRM), Public Relations Society of Kenya (PRSK), Institute of Certified Public Accountants of Kenya (ICPAK), among others.
 - c. The proposed Bill would not cater to the 50 diverse professionals in the banking sector, given their varied and distinct skill sets and backgrounds. With the significant differences in expertise, developing training programs and CPD structures that accommodate all these professionals will create duplicity and disharmony amongst the professional bodies.
16. On the existing regulatory bodies within the banking sector, he informed the Committee that the Central Bank of Kenya primarily regulates the banking industry under the Banking Act and Prudential Guidelines governing banks and individual bankers, providing round-the-clock regulation of banking business in Kenya, including Consumer Protection. Additionally, several regulators were responsible for consumer protection, including the Competition Authority, the Financial Reporting Centre, and the Office of the Data Protection, among others.
17. He argued that introducing further certification requirements for bankers would make Kenya less competitive in key sectors such as business and banking. Banks would have the option to fully automate operations, thereby limiting unnecessary compliance and expenses related to certification and Continuous

Professional Development. Additionally, they could outsource human capital from other jurisdictions through the shared services framework.

18. He submitted that the existing regulatory bodies provided adequate and necessary oversight. Therefore, any gap must be addressed through an amendment to the existing legal framework. In addition, the creation of more parastatals and state agencies should be avoided, as the public seeks a lean government.
19. The Committee was also informed that the banking industry comprises staff from various professions already regulated by their respective primary professional bodies, including the Law Society of Kenya (LSK), the Institute of Human Resource Management (HRM), and the Institute of Certified Public Accountants of Kenya (ICPAK). The enactment of the proposed Bill would create an additional cost to professionals and businesses that already meet Continuous Professional Development training requirements, maintain practising certificates, and pay annual subscription fees.
20. These professional certifications and Continuous Professional Development training requirements must be maintained, even while seeking entry-level roles or while out of employment looking for job opportunities, including private consultancies. The introduction of additional certification requirements would intensify this burden for individuals seeking employment or in employment and incur additional costs to employers.
21. He noted that the proposed Bill would introduce academic and professional certifications; therefore, individuals without these certifications would be unqualified to join the banking sector. Staff recruitment from other sectors of the economy to banking would stop once the Bill was assented to, thereby limiting employment opportunities in the banking industry.
22. The Committee was also informed that the proposed Bill would create barriers to entry and promote unnecessary bureaucracy in professional bodies, limiting the banking sector's flexibility and dynamism. The focus should remain on practical experience and adaptable skills rather than prescriptive academic and professional qualifications.
23. He argued that if every industry adopts similar legislation (manufacturing, insurance, hotels, transport, horticulture, medical, construction, retail) it would limit employment opportunities within particular sectors and hinder cross-sector employment, creating barriers to job mobility and flexibility, thereby increasing the rate of unemployment in the country.
24. Further, staff in the banking industry hold diverse academic degrees and certifications, providing the necessary skills required in the banking business,

not in specific professions. The proposal would also require certification of Board members for banks (Board Credit Committees), thereby limiting shareholders' ability to appoint directors with diverse skill sets to support banks' businesses.

25. In addition, he submitted that the proposals risk stifling innovation and limiting the practical application of skills, especially in dynamic sectors like banking, where bankers rely more on their skill set to achieve business objectives compared to professional certification. Therefore, there was a risk of over-standardization, which could suppress innovation in a sector that thrives on evolving skills and experience rather than rigid academic and professional qualifications.
26. He further stated that all developed and developing jurisdictions recognize banking as a business as opposed to a profession, and do not have statutory professional bodies to regulate professionals working in banks.
27. Therefore, the conduct of banking business was subject to consumer protection laws, which provide clear penalties for those who violate them.
28. In the United States, the United Kingdom, Australia, Singapore, and India, the focus is on organizational responsibility and professional accountability, and not sector professional bodies as proposed. This prevents unnecessary duplication of professional and regulatory mandates, allowing banks to adapt to the evolving needs of the financial industry.
29. The proposed Bill would have significant negative consequences for the banking sector, stifling innovation, increasing costs, and limiting both career progression and cross-sector employment.
30. The Chief Executive Officer concluded that the proposed Bill failed to demonstrate the existing gaps in the banking sector that ought to be addressed. It would also duplicate existing regulations and is self-serving. The Kenya Bankers Association, therefore, rejected the prayer made by the Petitioner seeking the enactment of the Bill in its entirety.

3.3 Central Bank of Kenya

The Governor, Central Bank of Kenya, Dr. Kamau Thugge, CBS, provided a written submission via a letter dated 4th October 2024, as follows—

31. He informed the Committee that the Central Bank of Kenya (CBK) had received the draft Bill from the petitioner earlier and shared its responses to the Petitioners via three letters. The Bank reiterated its position on the matter as expressed in the letters outlined below—

- (i) The Governor submitted that, in a letter dated 8th March 2024, the Central Bank of Kenya explained that a comprehensive framework and institutional structures existed to address the issues raised in the draft Bill. Therefore, the enactment of the proposed Bill would only duplicate the efforts of existing institutions, which were already mandated with the roles proposed in the petitioner. CBK further advised that the proposed enhancements be pursued through engagement with existing institutions, rather than by enacting the proposed Bill.
- (ii) The Central Bank of Kenya, in a letter dated 19th April 2024, responded to a request by the petitioner to hold a public participation stakeholder conference. CBK explained that the proposal articulated the same issues raised in the earlier submissions and reiterated its position as expressed in the letter dated 8th March 2024.
- (iii) In addition, the Central Bank of Kenya, in a letter dated 10th September 2024, responded to a request by the petitioner for the institution to support a proposed International Day of Bankers Conference in December 2024. CBK noted that the proposal aimed to revive issues related to the draft Bill that were previously reviewed.

3.4 Kenya Law Reforms Commission

The Kenya Law Reforms Commission, in a letter dated 20th May 2025, provided a written submission as follows:

- 32. The Commission Chief Executive Officer stated that Professionals occupy a position of great importance in society because they deliver esoteric services to individuals, organizations, and the government. The professional space has evolved over the years, as more occupations seek to establish a professional identity in addition to the traditionally established professions. In seeking to admit other occupations into the category of professions and setting mechanisms of professional regulation, one must begin by understanding the definition and traits of a profession.
- 33. He cited Prof. Horton B. (1958) criterion of a profession, which serves as a yardstick of what constitutes a profession. According to Horton, a profession must
 - (a) "Satisfy an indispensable social need and be based upon well-established and socially accepted scientific principles;
 - (b) Demand adequate pre-professional and cultural training;
 - (c) demand possession of a body of specialized and systemic knowledge;
 - (d) Give evidence of needed skills which the public does not possess;
 - (e) have developed a scientific technique which is the result of tested experience;

- (f) require the exercise of discretion and judgement in the manner of performance of duty;
- (g) have group consciousness designed to extend scientific knowledge in technical language;
- (h) have sufficient self-impelling power to retain its members throughout life, and must be used as a mere stepping stone to other occupations; and
- (i) recognise its obligations to society by insisting that its members live up to an established code of ethics."

34. The Chief Executive Officer also cited the definition of a professional by Hughes E. (1968). The author argues that the essence of the idea of professionalism is that professionals profess to know better than their clients on what ails them or their affairs.
35. On the other hand, the Committee was informed that Garoup N (2014) similarly considers a profession as an occupation with the following characteristics: specialized skills, which are partially or fully acquired by intellectual training, the service calls for a high degree of integrity, and it involves direct or fiduciary relations with clients.
36. Therefore, the Committee was also informed that a profession can be defined as a disciplined group of individuals, who adhere to ethical standards and who hold themselves out as, and are accepted by the public as possessing special knowledge and skills in a widely recognized body of learning derived from research, education and training at a high level, and who are prepared to apply this knowledge and exercise these skills in the interest of others.
37. The Chief Executive Officer argued that the regulation of professionals in any given industry is crucial for various reasons, including the need to set uniform standards for the services of that particular profession to ensure that consumers of the services are protected, promote accountability, and foster continuous learning and development of competencies and skills.
38. Further, the regulation of professional groups has often been justified as being in the public interest, with some scholars seeing professional associations and other similar groups as one of the four institutional bases of social order (along with the community, the market, and the state).
39. Recent years have seen an increase in interest in professional regulation, with various models of regulating professionals emerging. In this memorandum, KLRC will restrict itself to two forms of professional regulation: statutory regulation and self-regulation.
40. He also informed the Committee that under a typical statutory regulatory scheme, a regulatory authority comprises a majority of members who are either

reelected by or appointed from the profession regulated by that authority. In Australia, these authorities are called '*registration boards*', in the United Kingdom, they are known as '*Councils*', and in various provinces of Canada, '*professional colleges*'.

41. These regulatory authorities have powers conferred by statute to determine qualification and other requirements for registration and to maintain a publicly accessible register of qualified persons. Under this regime, it is an offence for an unregistered person to use those professional titles reserved for the profession.
42. In addition, the relevant statute also sets up a disciplinary system that, in most cases, empowers the regulatory authority to investigate complaints of professional misconduct and to impose sanctions on a practitioner, including deregistration if necessary. The effect of the regulatory scheme is to create an enforceable barrier to entry to the regulated profession and to regulate the standards of practice and conduct of registered practitioners.
43. He further stated that the self-regulation approach to professional regulation refers to disciplining one's own conduct by oneself. This was widely used in professions, sports, the press, advertising, and financial services.
44. The Committee was informed that the model of regulation differed from the 'command and control' model of regulation exhibited by the former to one based on market regulation. It enshrines the principle that a practitioner's peers are in the best position to judge what constitutes professional and unprofessional conduct and enables professional bodies or associations to govern their members in a manner that ensures that they are not subject to undue influence from the State or other external pressures.
45. Therefore, Self-regulation may not require legislation to be effective, as the professionals have the liberty to develop desirable instruments to guide their governance frameworks and code of conduct. However, where legislation is desired, it may be seen as a contract between professionals and the state to regulate a field of activity and a group of practitioners for the benefit of society.
46. Regarding the regulation of banking professionals in Kenya, he informed the Committee that the industry is regulated by the Central Bank of Kenya (CBK) through the Banking Act, Cap. 488, the Central Bank of Kenya Act, Cap. 491 and the attendant Regulations.
47. He further submitted that to ensure effective service delivery, the banking industry must adapt to the evolving needs of society by addressing key industry issues. Over the years, the government has demonstrated its commitment towards strengthening the banking sector.

48. The Chief Executive Officer noted that Kenya, just like other developing countries, had not established a regulatory body for professional bankers.
49. He stated that the proposed bill would give the Kenya Bankers Association the necessary legal impetus. The legal framework should clearly establish the necessary governance structure and qualifications for membership.
50. He also submitted that although the Banking Act, Cap. 488 creates an offence against a banking officer who engages in fraudulent and reckless activities, the proposed professional body will ensure that disciplinary action is taken against the responsible officer. This will promote accountability and ensure that the public has confidence in the industry. A professional body will similarly help establish the ethical standards for professionals in the sector.
51. In conclusion, the KLRC submitted that the proposed development of the Bankers Professional Bill was justified to ensure that the banking industry is properly regulated.

PART FOUR

4.0 COMMITTEE OBSERVATIONS

Upon hearing from the Petitioner, Kenya Bankers Association, Central Bank of Kenya, and Kenya Law Reform Commission, the Committee observed that—

52. The banking sector is already comprehensively regulated by the Central Bank of Kenya under the Banking Act, Cap. 488, the Central Bank of Kenya Act, Cap. 491, and attendant regulations, supported by oversight institutions such as the Competition Authority, the Financial Reporting Centre, and the Office of the Data Protection Commissioner.
53. The establishment of a new statutory regulatory body for bankers would have significant fiscal implications, including additional administrative costs, which is contrary to the Government's ongoing policy of rationalizing public expenditure.
54. Banking is not a profession but a business comprising diverse disciplines, including law, accountancy, human resources, ICT, cybersecurity, and engineering, among others. These disciplines are already governed by their respective professional bodies, and attempts to professionalize banking through statutory means would create regulatory duplication and conflict of mandates.
55. Excessive regulation of the banking business would increase compliance costs, create bureaucratic inefficiencies, and stifle innovation and employment opportunities within the sector. This would undermine competitiveness and flexibility at a time when the industry is embracing digitization, fintech solutions, and cross-sector skills.
56. International best practice in jurisdictions such as the United States, the United Kingdom, Australia, Singapore, and India treats banking as a business governed by institutional and consumer protection laws, rather than as a profession requiring statutory regulation of individuals.
57. The gaps highlighted by the Petitioner relating to ethics, professional standards, and consumer protection can be effectively addressed through strengthening the existing regulatory frameworks, particularly through the Central Bank of Kenya and Competition Authority of Kenya and industry self-regulation mechanisms such as the Kenya Bankers Association, the Kenya Institute of Bankers, as well as other sectoral associations, without the need for additional legislation.

PART FIVE


5.0 COMMITTEE RECOMMENDATIONS

58. Pursuant to the provisions of Standing Order 227, the Committee responds to the prayers as follows—

On the prayer that the Committee enacts the Bankers Professional Bill, the Committee notes that banking is an industry with various disciplines; hence, enactment of the proposed legislation would duplicate the roles of other professional bodies. **Therefore, the Committee rejects the enactment of the proposed Bankers Professional Bill.**

Signed: _____ Date: 23/09/25

THE HON. KAREMBA MUCHANGI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 SEP 2025	
DAY. Tuesday	
TABLED BY:	Hon. Karemba Muchangi (Chairperson, Public Petitions)
CLERK-AT THE-TABLE:	A. Shibuko

ANNEXURES

- Annex 1: The Adoption List
- Annex 2: Public Petition No. 74 of 2023 regarding Enactment of the Banker's Professional Bill, 2023
- Annex 3: Minutes of the 49th Sitting of the Public Petitions Committee held on 10th September 2024
- Annex 4: Correspondence by the Central Bank of Kenya dated 4th October 2024
- Annex 5: Correspondence by the Kenya Law Reform Commission dated 20th May 2025



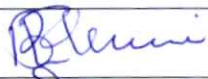
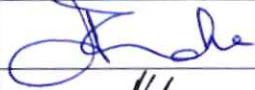

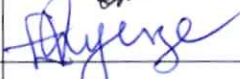

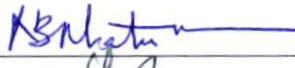




PUBLIC PETITIONS COMMITTEE

ADOPTION LIST

(i) Consideration and adoption of the Report on Public Petition No. 74 of 2023 by Mr. Charles Ochola Osango, regarding enactment of the Bankers Professional Bill.

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 16/09/2025

	HON. MEMBER	SIGNATURE
1.	Hon. Muchangi Karemba, CBS, M.P. (Chairperson)	
2.	Hon. Janet Jepkemboi Sitienei, CBS, M.P. (Vice Chairperson)	
3.	Hon. Patrick Makau King'ola, M.P.	
4.	Hon. Beatrice Kadeveresia Elachi, CBS, M.P.	
5.	Hon. Joshua Chepyegon Kandie, M.P.	
6.	Hon. Maisori Marwa Kitayama, M.P.	
7.	Hon. Edith Vethi Nyenze, M.P.	
8.	Hon. Patrick Ntwiga Munene, M.P.	
9.	Hon. Bidu Mohamed Tubi, M.P.	
10.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	
11.	Hon. Peter Mbogho Shake, M.P.	
12.	Hon. Suzanne Ndunge Kiamba, M.P.	
13.	Hon. John Bwire Okano, M.P.	
14.	Hon. Sloya Clement Logova, M.P.	
15.	Hon. Peter Irungu Kihungi, M.P.	

MIN./PPC/2025/158:

ADOPTION OF AGENDA

The Committee then adopted the agenda as listed hereunder on the proposal of Hon. Peter Irungu Kihungi, M.P, and seconded by Hon. (Eng.) Bernard Nebart Muriuki, M.P.

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of P/No. 74 of 2023 Regarding Enactment of The Bankers Professional Bill**
6. Any Other Business
7. Adjournment

MIN./PPC/2025/159:
SITTINGS

CONFIRMATION OF MINUTES OF PREVIOUS

The Agenda was deferred.

MIN./PPC/2025/160:

CONSIDERATION OF P/NO. 74 OF 2023
REGARDING ENACTMENT OF THE BANKERS
PROFESSIONAL BILL

The Committee considered the draft report and noted that—

- (i) Banking is comprehensively regulated under Banking Act Cap. 488 and CBK Act 491, supported by multiple oversight bodies.
- (ii) The petitioners have not identified specific malpractices that are not addressed by the existing laws.

Committee Observations

The Committee observed as follows—

- (i) The existence of the Institute of Credit Management of Kenya (ICM-K), which is registered under the Societies Act, Cap 108, ensured the promotion of professionalism and standards in credit management. Further, qualification examination administered by KASNEB was a requirement of membership in the ICM-K; therefore, there are provisions for the requisite training for certification, registration, and licensing of practitioners.
- (ii) The banking sector is already comprehensively regulated by the Central Bank of Kenya under the Banking Act, Cap. 488, the Central Bank of Kenya Act, Cap. 491, and attendant regulations, supported by oversight institutions such as the Competition Authority, the Financial Reporting Centre, and the Office of the Data Protection Commissioner.



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

**MINUTES OF THE 29TH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON TUESDAY, SEPTEMBER 16, 2025, IN MASHUA CONFERENCE ROOM,
SERENA BEACH RESORT AT 02.00 PM**

PRESENT

1. Hon. Eric Muchangi Karemba, M.P. Chairperson
2. Hon. Janet Jepkemboi Sitienei, CBS, M.P. Vice-Chairperson
3. Hon. Beatrice Kadeveresia Elachi, CBS, M.P.
4. Hon. Joshua Chepyegon Kandie, M.P.
5. Hon. John Bwire Okano, M.P.
6. Hon. Edith Vethi Nyenze, M.P.
7. Hon. (Eng.) Bernard Nebart Muriuki, M.P.
8. Hon. Peter Mbogho Shake, M.P.
9. Hon. Maisori Marwa Kitayama, M.P.
10. Hon. Suzanne Ndunge Kiamba, M.P.
11. Hon. Peter Irungu Kihungi, M.P.

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Bidu Mohamed Tubi, M.P.
3. Hon. Sloya Clement Logova, M.P.

SECRETARIAT

- | | |
|--------------------------|------------------------------|
| 1. Mr. Leonard Machira | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | Clerk Assistant I |
| 3. Ms. Anne Shibuko | Clerk Assistant I |
| 4. Mr. Bernard Toroitich | Clerk Assistant III |
| 5. Ms. Patricia Gichane | Legal Counsel II |
| 6. Ms. Nancy Akinyi | Research Officer III |
| 7. Ms. Roselyn Njuki | Senior Serjeant at arms |
| 8. Mr. Peter Mutethia | Audio Officer |

MIN./PPETC/2025/157:

PRELIMINARIES

The Chairperson called the meeting to order at 02:00 pm. am. with a Prayer.

- (iii) The establishment of a new statutory regulatory body for bankers would have significant fiscal implications, including additional administrative costs, which is contrary to the Government's ongoing policy of rationalizing public expenditure.
- (iv) Banking is not a profession but a business comprising diverse disciplines, including law, accountancy, human resources, ICT, cybersecurity, and engineering, among others. These disciplines are already governed by their respective professional bodies, and attempts to professionalize banking through statutory means would create regulatory duplication and conflict of mandates.
- (v) Excessive regulation of the banking business would increase compliance costs, create bureaucratic inefficiencies, and stifle innovation and employment opportunities within the sector. This would undermine competitiveness and flexibility at a time when the industry is embracing digitization, fintech solutions, and cross-sector skills.
- (vi) International best practice in jurisdictions such as the United States, the United Kingdom, Australia, Singapore, and India treats banking as a business governed by institutional and consumer protection laws, rather than as a profession requiring statutory regulation of individuals.
- (vii) The gaps highlighted by the Petitioner relating to ethics, professional standards, and consumer protection can be effectively addressed through strengthening the existing regulatory frameworks, particularly through the Central Bank of Kenya and Competition Authority of Kenya and industry self-regulation mechanisms such as the Kenya Bankers Association, the Kenya Institute of Bankers, as well as other sectoral associations, without the need for additional legislation.

Committee Recommendation

On the prayer that the Committee enacts the Bankers Professional Bill, **the Committee rejects the enactment of the proposed Bankers Professional Bill.**

Adoption of the Report

The Committee adopted the report having been proposed by Hon. Edith Nyenze, M.P and seconded by Hon. Beatrice Elachi, M.P.

MIN./PPC/2025/161:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 04:00 p.m. The next meeting will be held on Wednesday, 17th September 2025 at 10.00 a.m.

HON. MUCHANGI KAREMBA, CBS, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date: 23/09/2025



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 49TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, SEPTEMBER 10, 2024, IN CONFERENCE ROOM GARDEN SUITE 1&2, 6TH FLOOR, GARDEN INN HOTEL AT 10.00. A.M

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. Vice Chairperson
3. Hon. Joshua Chepyegon Kandie, M.P
4. Hon. John Walter Owino, M.P.
5. Hon. Ernest Ogesi Kivai, M.P.
6. Hon. Maisori Marwa Kitayama, MP
7. Hon. Bidu Mohamed Tubi, M.P.
8. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
9. Hon. Edith Vethi Nyenze, M.P.
10. Hon. Peter Mbogho Shake, M.P.
11. Hon. Suzanne Ndunge Kiamba, M.P.
12. Hon. Caleb Mutiso Mule, M.P.

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Sloya Clement Logova, M.P.
3. Hon. John Bwire Okano, M.P.

IN ATTENDANCE

SECRETARIAT

- | | |
|-------------------------|-----------------------------------|
| 1. Ms. Miriam Modo | Clerk Assistant I |
| 2. Mr. Willis Obiero | Clerk Assistant III |
| 3. Ms. Patricia Gichane | Legal Counsel II |
| 4. Mr. Martin Sigei | Research Officer III |
| 5. Ms. Nancy Akinyi | Research Officer III |
| 6. Ms. Felistus Muiya | Public Communications Officer III |
| 7. Mr. Peter Mutethia | Audio Officer |
| 8. Mr. Calvin Karungo | Media Relations Officer III |
| 9. Mr. Paul Shana | Sergeant-at-Arms |

PETITIONER(S)

1. Mr. Charlse Ochola
2. Mr. Gilbert Allela
3. Ms. Purity Wekesa
4. Mr. Jackson Kirui

KENYA BANKERS ASSOCIATION

- | | |
|------------------------|---------------|
| 1. Mr. Raimond Molenje | Ag. CEO |
| 2. Ms. Yvette Mbaja | Legal Officer |
| 3. Ms. Beth Karanja | Legal Affairs |

ABSA BANK

- | | |
|---------------------------|----------------------------|
| 1. Mr. Vaslas Odhiambo | Head of Human Resource |
| 2. Mr. Kenneth Kangarati | Director, Legal Compliance |
| 3. Mr. Emmanuel Wetangula | Legal Counsel |
| 4. Mr. Guzo Mogere | Legal Counsel |
| 5. Mr. Biko Angwenyi | Legal Counsel |
| 6. Mr. Charlse Wokabi | Head of Corporate Affairs |
| 7. Ms. Milkah Gachanja | Legal Counsel |

MIN./PPETC/2024/307: PRELIMINARIES

The Chairperson called the meeting to order at 2:30 pm. and proceedings began with prayers by Hon. Joshua Chepyegon Kandie, M.P.

MIN./PPETC/2024/308 ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of P/No. 74 of 2023 regarding Enactment of the Bankers Professionals Bill, 2023
 - Meeting with the Petitioner (Mr. Charlse Ochola)
6. Meeting with Kenya Bankers Association
 - Consideration of P/No. 74 of 2023 regarding Enactment of the Bankers Professionals Bill, 2023;
 - Consideration of P/No. 55 of 2023 regarding Enactment of Legislation to Regulate the Credit professionals; and
 - Consideration of P/No. 67 of 2023 regarding Dismissal from Employment of Mr. Gerald Muli Kiilu by ABSA Bank (Formerly Barclays Bank) Prestige Centre
7. Meeting with ABSA Bank Management
 - Consideration of P/No. 67 of 2023 regarding Dismissal from Employment of Mr. Gerald Muli Kiilu by ABSA Bank (Formerly Barclays Bank) Prestige Centre
8. Any Other Business
9. Adjournment

Joshua Kandie, M.P. and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/309: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The agenda was deferred.

MIN./PPETC/2024/310: CONSIDERATION OF P/NO. 74 OF 2023 REGARDING ENACTMENT OF THE BANKERS PROFESSIONALS BILL, 2023

Meeting with the Petitioner, Mr. Charlse Ochola

The Petitioner, Mr. Charlse Ochola submitted as follows-

1. The banking sector plays a vital role in the economy of the country, in ensuring that the banking profession upholds the highest standards of professionalism, competency, and ethical conduct, hence the need for a comprehensive legislative framework that addresses these concerns and enhances the integrity of the banking industry.
2. The existence of the Kenya Bankers Association, Kenya Institute of Bankers and the Kenya Forex Bureau Association which are esteemed professional bodies that represent the bankers professionals and banking industry in Kenya has the primary objective to promote excellence and professionalism within the banking sector through the provision of relevant training, research, and advocacy. However, there is no legislation that regulates the norms and standards of banking professionals in Kenya.
3. Since the banking industry adds value to the national economy, serving as a backbone for financial transactions, savings, investments, and overall economic stability. It is imperative to establish a robust legislative framework that ensures the professionalism, integrity, and accountability of bankers safeguard the interests of customers and promote public trust.
4. In 2015, Imperial Bank, a mid-sized Kenyan bank, collapsed in 2015 following revelations of fraudulent activities. The revelations disclosed that the top management of the bank including its former CEO, were implicated in a massive fraud scheme that involved concealing non-performing loans, creating fictitious accounts, and siphoning off funds from its depositors.
5. Consequently, the bank was closed, its depositors and investors incurred significant losses, and thereafter raised concerns about corporate governance in the banking sector.
6. The enactment of the Bankers Profession Bill would establish a comprehensive legislative framework that addresses these concerns and enhances the integrity of the banking industry.
7. The proposed Bill seeks to introduce comprehensive regulations and standards for the banking profession. It emphasizes the importance of licensing and certification, ensuring that only qualified individuals with the necessary expertise and ethical conduct are allowed to practice banking Kenya. The bill

tending practices, transparency, and dispute resolution.

Prayers

The Petitioners prayed that the Committee recommends-

- (i) Enactment of a legislation to regulate the licensing, registration and regulation of banking professionals in Kenya; and
- (ii) Consideration of the draft legislation of the Bankers Professional Bill, 2023 annexed to the petition for enactment by the National Assembly.

Committee Concerns

1. **Regarding the introduction of a new Bill, despite existing Acts for the industry**, the Petitioners clarified that there was a lack of public confidence and professional training within the industry, which negatively impacted the economy. They argued that the new Bill would help restore confidence and address these issues.
2. **Concerning the legislative proposal by Hon. Julius Rutto, MP, and its relation to the petition**, the Petitioners explained that although they had engaged with the Honorable Member regarding the Bill, their discussions focused on fast-tracking the proposal. The Member intended to bring the proposal before the Budget and Appropriations Committee. However, the Petitioners believed that the Committee was better positioned to advise on the most appropriate way forward for advancing the proposal.

Committee Resolution

After deliberations, the Committee resolved to engage the Hon. Julius Rutto, MP on the status and way forward of the proposal.

MIN./PPETC/2024/311:

MEETING WITH KENYA BANKERS ASSOCIATION

The Ag. CEO of Kenya Bankers Association, Mr. Raimond Molenje appeared before the Committee and submitted on P/No. 74 of 2023 regarding Enactment of the Bankers Professionals Bill, 2023 and P/No. 55 of 2023 regarding Enactment of Legislation to Regulate the Credit professionals as follows:

1. The Kenya Bankers Association brings together all commercial banks in Kenya to realize economic empowerment, create employment opportunities and wealth for individuals, households, businesses and the country.
2. The proposed Bills: Credit Professionals Bill and Institute of Bankers Professional Bill will hinder and limit economic growth, employment opportunities and wealth creations for individuals, households, and businesses.
3. The Bills as proposed are non-existent in any developed or developing country and are bad for the economy, destructive to careers and create exclusive clubs limiting entry at all levels.

addressed by current laws and regulations. Consequently, Kenya Bankers Association opposes the enactment of the two Bills in their entirety based on the following grounds:

- i. Banking is not a profession as suggested by the Petitioners since it has almost 50 different professions with different skill sets hence difficult to harmonize.
- ii. The proposals will hinder employment as they will not allow for openness and flexibility for the banking industry. Banks would have the option of fully automating operations to limit the unnecessary compliance and expenses for certification and CPDs and outsource human capital from other jurisdictions through the shared services framework leading to unemployment.
- iii. Other industries such as manufacturing, media, hotels, among others may also demand their professional bodies.
- iv. On the proposed Credit Professionals Bill, the credit function in banks is broad and every bank staff is involved in credit administration and the petitioners have not provided a criterion to determine who a credit staff/professional is.
- v. There are existing regulatory bodies within the banking sector such as the Central Bank of Kenya which primarily regulates the banking industry, under the Banking Act and Prudential Guidelines governing banks and individual bankers providing round the clock regulations of banking business including consumer protection. Additionally, several regulators undertake consumer protection including Competition Authority, Financial Reporting Centre, Office of the Data Protection, among others. Introducing further certification requirements for bankers renders Kenya uncompetitive for business and banking being a business.
- vi. Any identified gaps could be addressed through the existing regulatory framework.

Committee Concerns

1. **On whether belonging to a particular profession hinders career progression in banking**, the Acting CEO stated that most professionals within the bank have limited opportunities to advance their careers without diversifying their skill set, which provides a competitive edge. The CEO expressed concern that the proposed Bill would create barriers to both entry and career progression within the banking industry.
2. **Regarding any identified gaps in the banking industry**, the Acting CEO noted that the proposed Bills do not address any significant issues but instead impose additional compliance costs, which will ultimately be passed on to consumers. The main challenges in the market were access to credits and consumer complaints which could be addressed through the existing legislation. The KBA was working with CBK to assist in improving access to credit with low interest rates. On the customer complaints, CBK had put

professional body will have mandate on banking staff but not the body corporate.

3. On the role of the Kenya Bankers Association (KBA) in the industry and whether a new professional body under the Bills would interfere with KBA, the Acting CEO clarified that KBA's role is to help banks influence legislation, provide financial education, and build capacity for banking staff. While KBA would not be directly harmed if the Bills are enacted, the CEO emphasized that the Bills are unlikely to have any positive impact on the economy.

MIN./PPETC/2024/312:

CONSIDERATION OF P/NO. 67 OF 2023
REGARDING DISMISSAL FROM EMPLOYMENT OF
MR. GERALD MULI KIILU BY ABSA BANK
(FORMERLY BARCLAYS BANK) PRESTIGE CENTRE

Meeting with ABSA Bank Management

Mr. Vaslas Odhiambo on behalf of ABSA Bank submitted as follows:

1. The Petitioner, Mr. Gerald Muli Kilo was employed by Barclays Bank Kenya Limited (now Absa Bank Kenya PLC) on 2nd June 1993 and worked for 12 years before suspension on 20th December 2004 owing to certain investigations carried out at the time regarding differences identified at a particular branch he worked as a teller/cashier. Some malpractices were identified within the teller space where tellers were engaged in lending money out of the till to fellow staff members and also differences in the till not reported on.
2. Investigations were conducted, a hearing held, and the termination of his employment was communicated to him on January 31, 2005. The reason for termination was that the Petitioner was involved irregular lending of money in his custody and care at the till to another member of staff.
3. On the 4th April 2005, he appealed the decision to terminate his employment which was determined and the decision for termination upheld. It was determined that there were no additional submissions that would have caused reversal of the decision.
4. In 2009, he referred the matter to Ministry of Labour and Human Resource Development requesting for a determination. However, a certificate of unresolved dispute was issued by the Ministry on that matter.
5. In 2010, he filed a case in court on the same issue, and the matter was dismissed because it was time barred and the issues highlighted were viewed by the court as not required to be considered differently.
6. He appealed the decision in 2011 and the same matter was dismissed in 2016. In 2017, he went to the Ministry of Labor where a recommendation was given requesting the bank to consider reinstating him to which the bank objected citing the different cases that had already been in court over the same.

he filed a judicial review in court which was similarly dismissed. Initially, he had wanted the Attorney General, and the Ministry of Labor required to implement the recommendations by the Ministry but the court was of the view that that was not plausible.

8. He filed another case which was also dismissed in reference to the processes that had been followed internally and the external court processes instituted by the petitioner.
9. The bank was present in all the instances where the matter was advanced either in court or internally.

Committee Concerns

1. **Regarding the colleagues involved in malpractices and their outcomes**, ABSA Bank clarified that three employees were implicated. Two, including the Petitioner, were terminated, while the third received a final warning letter and remains employed. The bank emphasized that each case was judged on its individual merit.

2. **As for the specific malpractices**, ABSA explained that the two terminated employees were found lending money to each other from the teller boxes using clients' funds, a serious violation. The third employee, who received a warning, was involved in a teller discrepancy. Of the two terminated employees, one held a senior position, while the Petitioner and the other were on the same level.

3. **Regarding ABSA's disagreement with the findings of the Conciliator from the Ministry of Labour**, the bank stated that the offenses were considered gross violations, warranting termination. The Ministry had recommended that the bank reinstate the employees and pay ten months' salary for wrongful termination, along with other possible relief. However, ABSA maintained that the breaches of trust were too severe, as they could have led to client complaints. This decision was communicated to the Conciliator.

4. **Concerning the financial loss incurred by the bank**, ABSA reported a loss of approximately Kshs366. While the amount may seem small, it had serious policy implications, as employees were using cash from the tills for personal lending and failed to report shortages. The bank felt compelled to act firmly to discourage such malpractices.

5. **Regarding the bank's final decision on dismissal and whether fair administrative action was taken**, ABSA noted that the matter had gone through both the Ministry of Labour and the courts, where the cases were dismissed. The decision to terminate was based on the severity of the circumstances. Furthermore, the bank's summary dismissal procedure is permitted by law in certain situations.

6. **On why Mr. Gerald did not receive a warning letter despite this being his first offense**, ABSA explained that while Gerald admitted his guilt, he refused to put it in writing or request leniency. He had lent Kshs149,000, and during a snap-check, all but Kshs366 had been returned. The bank concluded that Gerald's lack of cooperation justified his termination. In contrast, the employee who received

cooperated fully with the investigation, which resulted in different outcomes for each case.

7. Regarding Mr. Gerald's pension or any other compensation, ABSA confirmed that he had been part of the bank's pension policy for 12 years, and there was no additional compensation due beyond his pension contributions. The bank was yet to confirm if he had received his pension, but he was entitled to his National Social Security Fund (NSSF) contributions, administered by the NSSF Fund.

8. Finally, in relation to claims of sexual harassment or relationships linked to the case, the bank stated that there had never been an investigation into such matters, and no statement from Mr. Gerald had raised these concerns. As a result, the allegations remained unsubstantiated.

Committee Resolution

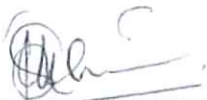
Following deliberations, the Committee resolved that ABSA Bank Management should provide additional submissions by Friday 13th September, 2024 on the following:

- i. A copy of the policy relied upon by the bank to justify the dismissal of Mr. Gerald;
- ii. The internal disciplinary committee report recommending Mr. Gerald's dismissal; and
- iii. Information on whether any of Mr. Gerald's benefits were used to recover the loan he had taken with the bank, and details on how he managed to clear the loan after his dismissal.

MIN./PPETC/2024/313:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:30 p.m. The next meeting will be held on Tuesday, 10th September 2024 at 2:30 p.m.

Sign: 

For (CHAIRPERSON)

Date.....19-11-2024.....



**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)**

CONVEYANCE OF PUBLIC PETITION

(No. 74 of 2023)

**REGARDING ENACTMENT OF THE BANKERS PROFESSIONAL BILL,
2023**

- 1. Honourable Members,** Article 119 of the Constitution accords any person the right to petition Parliament to consider any matter within its authority. Further, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition other than those presented by a Member.
- 2. Honourable Members,** in this regard, I wish to report to the House that my Office has received a Petition from *Susan Nasimiyu Masafu of ID No. 29670344* and *Charles Ochola Osango of ID No. 6056427*, representing the banking professionals in Kenya.
- 3. The Petitioner** acknowledges the role of the Kenya Bankers Association, the Kenya Institute of Bankers, and the Kenya Forex Bureau Association and their primary objective of promoting excellence and professionalism within the banking sector through the provision of relevant training, research, and advocacy.
- 4. Honourable Members,** in addition to the existing associations, the Petitioner is convinced that the industry requires the establishment of a robust legislative framework that regulates the norms and standards of banking professionals in Kenya, thus ensuring professionalism, integrity, and accountability of bankers in safeguarding the interests of customers and promoting public trust.

5. **The Petitioner** explains that the impetus is a result of the collapse of Imperial Bank in 2015 following fraudulent activities. Investigations disclosed that the top management of the bank, including its former CEO, was implicated in a massive fraud scheme that involved concealing non-performing loans, creating fictitious accounts, and siphoning of funds from depositors. Consequently, the bank was closed, its depositors and investors incurred significant losses, and thereafter, concerns were raised about corporate governance in the banking sector.
6. **The Petitioner** therefore prays that the National Assembly enacts the Bankers Profession Bill which will establish a comprehensive legislative framework that will regulate licensing and certification for qualified individuals with the necessary expertise and ethical conduct to practice banking as well as address consumer protection, fair lending practices, transparency, and dispute resolution mechanisms.
7. **Honorable Members**, having established that the matter raised in the Petition is well within the authority of this House; and further, that the matters raised in this petition are not pending before any court of law, Constitutional or Legal body, I hereby commit the Petition to the Public Petitions Committee for consideration pursuant to Standing Order 208A.
8. The Committee is required to consider the Petition and report its findings to the House and to the Petitioner in accordance with Standing Order 227(2).

I thank you.


THE RT. HON. (DR.) MOSES F. M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Date 29/11/23

**PETITION TO THE NATIONAL ASSEMBLY TO ENACT BANKERS
PROFESSIONAL BILL 2023**

To: The Clerk of the National Assembly,

Parliament Buildings,

P.O. BOX 41842-00100

Nairobi.

**RE: PETITION TO THE NATIONAL ASSEMBLY TO ENACT BANKERS
PROFESSIONALS BILL, 2023**

We, the undersigned,

Citizens of the Republic of Kenya, and the residents of Nairobi County;

Draw the attention of the National Assembly to the following—

1. That, we note that the banking sector plays a vital role in the economy of the country, and it is crucial to ensure that the banking profession upholds the highest standards of professionalism, competency, and ethical conduct, hence the need for a comprehensive legislative framework that addresses these concerns and enhances the integrity of the banking industry.
2. That, we are aware of the existence of the Kenya Bankers Association, Kenya Institute of Bankers and the Kenya Forex Bureau Association which are esteemed professional bodies that represent the bankers professionals and banking industry in Kenya and that the primary objective of the aforementioned bodies is to promote excellence and professionalism within the banking sector through the provision of relevant training, research, and advocacy. However, we note that there is no legislation that regulates the norms and standards of banking professionals in Kenya.
3. That, since the banking industry adds value to the national economy, serving as a backbone for financial transactions, savings, investments, and overall economic stability. It is imperative to establish a robust

PETITION TO THE NATIONAL ASSEMBLY TO ENACT BANKERS PROFESSIONAL BILL 2023

legislative framework that ensures the professionalism, integrity, and accountability of bankers to safeguard the interests of customers and promote public trust.

4. That, we observe that in 2015, Imperial Bank, a mid-sized Kenyan bank, collapsed in 2015 following revelations of fraudulent activities. The revelations disclosed that the top management of the bank, including its former CEO, were implicated in a massive fraud scheme that involved concealing non-performing loans, creating fictitious accounts, and siphoning off funds from its depositors. Consequently, the bank was closed, its depositors and investors incurred significant losses, and thereafter raised concerns about corporate governance in the banking sector.
5. That, we propose the enactment of the Bankers Profession Bill to establish a comprehensive legislative framework that addresses these concerns and enhances the integrity of the banking industry.
6. That, we have made the best effort to have this matter addressed by the relevant authorities which is the National Assembly by preparing a draft proposed Bill for consideration by the National Assembly.
7. That, the proposed Bankers Profession Bill seeks to introduce comprehensive regulations and standards for the banking profession. It emphasizes the importance of licensing and certification, ensuring that only qualified individuals with the necessary expertise and ethical conduct are allowed to practice banking in Kenya. Additionally, the bill provides mechanisms for consumer protection, addressing issues such as fair lending practices, transparency, and dispute resolution.
8. That, the issues in respect of which this petition is made are not pending in any court of law, constitutional, or any other legal body.

Therefore, your humble petitioners pray that the National Assembly—

1. enacts legislation to regulate the licensing, registration and regulation of banking professionals in Kenya.
2. considers the draft legislation of the Bankers Professional Bill, 2023 annexed to this petition for enactment by the National Assembly.

And your PETITIONERS will ever pray.

PROFESSIONAL BILL 2023

Name	ID	Phone No.	Signature
1. Susan Nasimiyu Masafu	29670344	0703326629 <i>Susan</i>
2. Charles Ochola Osango	6056427	0725719313 <i>Charles</i>

Date 19 day of 10 2023



THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

PUBLIC PETITIONS COMMITTEE

LEGAL BRIEF:

PUBLIC PETITION (*NO. 74 OF 2023*),

**BRIEF ON PETITION NO. 74 OF 2023 REGARDING THE ENACTMENT OF THE
BANKERS PROFESSIONAL BILL, 2023**

June 2024

1. In the Petition, Ms. Susan Nasimiyu Masafu and Mr. Charles Ochola Osango the petitioners representing banking professionals, draws the attention of the House to their prayer for enactment of legislation to regulate the licensing, registration and regulation of banking professionals in Kenya.
2. In the Bill the petitioners submits that the banking sector plays a vital role in the economy and it is thus necessary that banking professionals uphold the highest standards of professionalism, competency and ethical conduct.
3. The petitioners notes that various associations in the sector exist such as the Kenya Bankers Association, the Kenya Forex Bureau Association and the Kenya Institute of Bankers. However, there is no legislation that regulates the norms and standards of banking professionals in Kenya.
4. In order to regulate the profession, the petitioners propose legal provisions on the establishment of the Institute of Banking Professionals, the licensing and registration of the practitioners, disciplinary measures and creates several offences to regulate the professionals.
5. The petitioner avers that the proposed legislation will enhance quality of banking services and enhance consumer protection.
6. The petitioner prays for the enactment of the Bankers Professional Bill, 2023 and the consideration of their annexed draft Bill.

ANALYSIS

a. The Constitution

7. Article 94 (3) of the Constitution provides for the role of the Parliament of passing amendments in the exercise of its legislative authority. Article 95 of the Constitution mandates the National Assembly to deliberate and resolve the issues of concern to the people.

b. The National Assembly Standing Orders

8. Standing order 219 provides that a public petition may seek the House to consider any matter within its authority including the enacting, amending or repealing any legislation. If the Committee considers and approves the Petition, the approved content will be reduced to a legislative proposal sponsored by the Committee for consideration by the House.

Standing Order 114 A (1) (b) provides for the exemption from pre-publication scrutiny of a proposal sponsored by the public petitions committee

c. Laws regulating professionals within the Banking industry

9. The banking industry is regulated by the Banking Act, the Microfinance Act, the National Payment system Act and the Central Bank of Kenya Act.
10. The petition proposes the regulation of banking professionals, the proposed Bill does not clearly define banking professionals, it can be presumed it includes all professionals in the banking industry.
11. However, banking professionals are a diverse group of professionals from different disciplines, they are therefore regulated based on their profession such as lawyers, accountants and investment and financial analysts.
12. The **Accountants Act Cap 531**, establishes the Institute of Certified Public Accountants of Kenya (ICPAK) that is mandated to regulate the practice of accountants and promote professional standards and competence.
13. The **Investment and Financial Analysts Act Cap 542** similarly establishes the Institute of Certified Investment and Financial Analysts to promote standards of professional competence and ethical practice.
14. The **Advocates Act Cap 16** and the Law Society of Kenya Act Cap. 18 regulate legal professionals. They seek to promote professional competence and conduct of legal practitioners in the country, by providing for qualifications for practice as an advocate, requirements for continued professional development and the establishment of a complaints commission to investigate misconduct of advocates.
15. The petitioner's proposed Bill seeks to provide for the licensing and registration of banking professionals including setting minimum ethical standards and disciplinary measures.
16. The Committee should seek the views of the petitioners and stakeholders to understand the rationale and whether there is need for a regime to regulate banking professionals.

CONCLUSION

17. In light of the foregoing legal provisions, in considering the Petition, the Committee should seek to interrogate the views of —

- a) the Petitioners on the proposed legislation
- b) the Kenya Bankers Association;
- c) the Kenya Forex Bureau Association,
- d) the Kenya Institute of Bankers;
- e) the Central Bank of Kenya,
- f) the Attorney General, and
- g) the Kenya Law Reform Commission.

GICHANE PATRICIA
LEGAL COUNSEL

OPEN LETTER TO THE CLERK OF NATIONAL ASSEMBLY

CHARLES OCHOLA OSANGO

ID: 6056427

Petitioner

Email: karateng2000@yahoo.com | kablak10@gmail.com

WhatsApp: +254 725 719 313

Phone: +254 725 719 313

Date: 9/8/2024

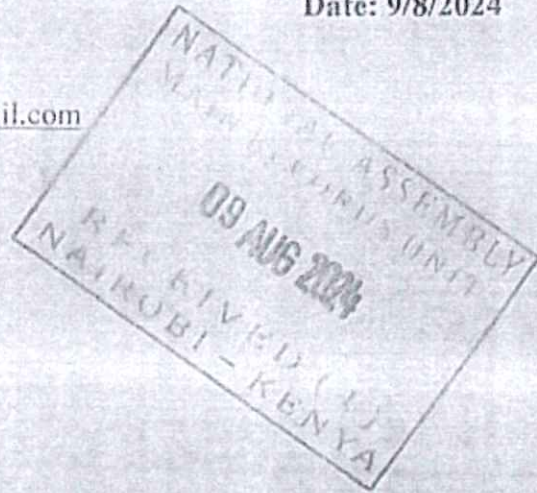
MR. SAMUEL NJOROGE EBS

The Clerk of National Assembly

Parliament Buildings

P.O. BOX 41842-00100

Nairobi, Kenya



Dear Clerk,

SUBJECT: NOTIFICATION OF RESIGNATION AND NEW PETITIONERS FOR THE BANKERS PROFESSION BILL 2023

REF:KNA/DLPS/PPETC/CORR./2024/121 20th June 2024 concern with the meeting which was not attended on 3rd July, 2024

I hope this letter finds you well. I am writing to formally notify your office of a change in the petitioners supporting the Bankers Profession Bill 2023.

Ms. Susan Nasimiya Masafu ID/29670344, who was initially a signatory and supporter of the petition, resigned from her position on 29 December 2023. The resignation letter was delivered to your office on 10 March 2024. Due to her resignation, there have been adjustments to the list of petitioners supporting the bill. (*Find attached copy*)

Enclosed with this letter, please find the updated list of petitioners, which includes new signatories who are committed to supporting the Bankers Profession Bill 2023. We believe their support will contribute significantly to the advancement of this important legislation.

For all future communications regarding this petition, please channel them through the following contact information:

- Email: karateng2000@yahoo.com | kablak10@gmail.com
- WhatsApp: +254 725 719 313

Thank you for your attention to this matter. Should you have any questions or require further information, please do not hesitate to contact me.

Yours sincerely,

Submitted By: Charles Ochola Osango Date: 09/08/2025

Petition | Bank Customer | Concerned Citizen

ID No: 6056427

Email: karateng2000@yahoo.com

CC. Ahmed Kadhi. Clerk Assistant
CC. Miriam Modo. Clerk Assistant
CC. Mr. Kipkemol Arap Kirui

NATIONAL ASSEMBLY

From: Mr. SUSAN NASIMIYU MASAFU

Date: 29/12/20123

Email: susanmasafu21@gmail.com

Phone: +2540703326629

ID: 29670344

Nairobi.

To: MR. SAMUEL NJOROGE EBS

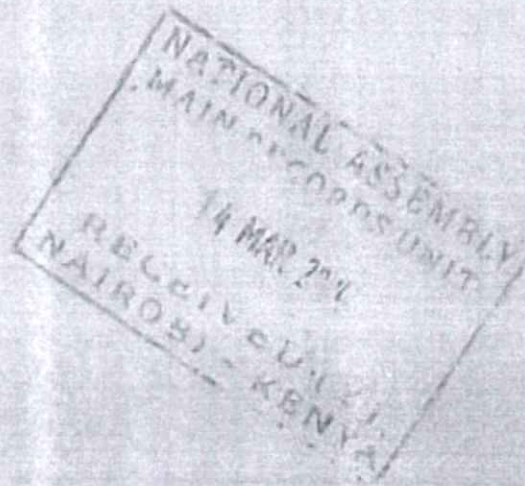
The Clerk of National Assembly

National Assembly of Kenya

Parliament Buildings

P.O. BOX 41842-00100

Nairobi, Kenya



Dear Sir,

SUBJECT: PETITION REGARDING ENACTMENT OF THE BANKERS PROFESSIONAL BILL, 2023 – P/NO. 74 OF 2023 - UPDATE ON PROCESS

Reply to Reference KNA/DLPS/CORR/2023/37 dated 21st November 2023

I trust this letter finds you well. I am writing to inform you of a development in the ongoing petition for petition regarding enactment of bankers professional bill for which I am the petitioner.


My name is Susan Nasimiyu Masafu ID: 29670344, and I have been actively engaged in the petition process. However, due to unforeseen circumstances, I find myself unable to continue my involvement in the process at this time. As a result, I have designated Mr. Charles Ochola Osango to represent and continue with the petition on my behalf.

Charles Ochola Osango ID: 605647 is well-informed about the particulars of the petition and is fully prepared to assume responsibility for its progression. I have confidence in his ability to represent my interests diligently and effectively during the course of this matter.

I kindly request your understanding and cooperation in acknowledging Mr. Charles Ochola Osango as the designated representative for the remainder of the petition process. Any correspondence, updates, or relevant information pertaining to this petition should be directed to Mr. Osango at email: karateng2000@yahoo.com Contact: +254725719313.

I appreciate your attention to this matter and thank you for your understanding. Please do not hesitate to contact me should you require any further information.

Sincerely,


From: Mrs. Susan Nasimiyu Masafu ID: 29670344

Email: susanmasafu21@gmail.com

Phone: +2540703326629. Nairobi.

Cc: Charles Ochola Osango ID: 6056427

Email: karateng2000@yahoo.com Phone: +254725719313

LIST OF MEMBERS OF PUBLIC SUPPORT PETITION NO.74/2023 ON THE ENACTMENT OF THE BANKERS PROFESSIONAL BILL, 2023

No	NAME	ADDRESS	I.D. No.	SIGNATURE
	Charles Ochola Odingo	Kamukong'o	605627	
	Amos Kio GITHUMU	Amos Kio	13545953	
	IAN KAMAU	ian@gmail.com	32461730	
	Stephen Kamau	Engineer Kamau	40373202	
	LINDA DE MERRILL	In Nairobi, 846 yelco	0554213	
	Lucy Atieno	lucyochia@gmail.com	30795830	
	George Wasamei	George Wasamei@gmail.com	0342857	
	Alice Achumba	1816+NP1	30667323	
	Fredrick Ouyanga Otiang	otiangfredrick57@gmail.com	38017793	
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	Peter Omondi Omondi	Peteromondi146@gmail.com	9226568	

NATIONAL ASSEMBLY
RESOLUTION UNIT
09 AUG 2023
NAIROBI - KENYA



"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI
Telephone: Nairobi, +254-20-2241186/2241201
Fax: +254-20-2225786
www.info@klrc.go.ke

When replying please quote

Ref. No. KLRC/3764 VOL.IV(48)

NATIONAL ASSEMBLY
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PROCEDURAL, RESEARCH AND JOURNALS
P. O. Box 41842, NAIROBI



KENYA LAW REFORM COMMISSION
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TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

DLPS
Please deal
SD
30/05/25

.....20.....

20th May 2025

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

Head-PP
Please process
Aspirations
(3)6

③ *Kadhi*
Please TRA
to s/b

ATT: Mr. Jeremiah W. Ndombi, MBS

Dear *Jeremiah,*

RE: REQUEST FOR WRITTEN SUBMISSIONS ON VARIOUS PUBLIC PETITIONS
SUBMITTED TO THE NATIONAL ASSEMBLY

Your letter Ref. KNA/DLPS/PPETC/CORR/2025/018 dated 25 April, 2025 refers

The Kenya Law Reform Commission has analysed the petitions and prepared the attached consolidated submissions.

We thank you for your continued support and cooperation.

Yours *Sincerely*

PETER M. MUSYIMI, HSC
AG. SECRETARY/CEO

NATIONAL ASSEMBLY
RECEIVED
23 MAY 2025
CLERK'S OFFICE
P.O. Box 41842, NAIROBI



KENYA LAW REFORM COMMISSION'S MEMORANDUM ON PUBLIC PETITIONS TO
THE NATIONAL ASSEMBLY

MAY 2025

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A. INTRODUCTION

The Kenya Law Reform Commission (KLRC) is established under the Kenya Law Reform Commission Act, 2013 with a mandate to keep under review all the laws of Kenya to ensure that they conform to the letter and spirit of the Constitution. In this regard, KLRC advises the Government, including Parliament, on the reform and harmonisation of laws, promotion of access to justice and the development of a sound legal and regulatory framework for national development.

The Kenya Law Reform Commission (KLRC) acknowledges receipt of a letter from the National Assembly dated 25 April 2024 (ref: KNA/DLPS/ PPETC/CORR/2025/018) seeking submissions on the following issues:

- (a) Proliferation of LGBTQ rights in the country;
- (b) Amendment of the Penal Code to provide for the offence of sextortion;
- (c) Enactment of the Kenya Robotic and Artificial Intelligence Society Bill, 2023;
- (d) Decriminalisation of Attempted Suicide;
- (e) Enactment of legislation of development of irrigation infrastructure;
- (f) Enactment of the Bankers Professional Bill, 2023;
- (g) Enactment of Legislation for Regulation of Credit Professionals;
- (h) Enactment of Proposed Geophysical Professionals Bill; and
- (i) Proliferation of Lesbians, Gays, Bisexuals, Transgender and Queer (LGBTQ) in the Country.

KLRC prepares this memorandum in response to the request, and in line with its mandate under section 6(c) of its Act, to provide advice technical assistance and information to the government with regard to the reform or amendment of a branch of the law. The memorandum is divided into three parts:

Part I of the memorandum addresses petitions related to enactment of amendment Acts to address the offences of sextortion and attempted suicide.

Part II of the memorandum covers the proposed enactment of laws to regulate banking, credit and geophysical professionals and the Kenya Robotic and Artificial Intelligence Society.

Part III of the memorandum responds to petitions seeking the enactment of legislation of development on irrigation infrastructure and review of the proliferation of Lesbians, Gays, Bisexuals, Transgender and Queer (LGBTQ) in the country.

PART I-CRIMINAL LAW

1. THE OFFENSE OF SEXTORTION

(a) Defining Sextortion

Sextortion is a blended word derived from the words “sex” and “extortion”. The International Association of Women Judges defines sextortion as ‘the abuse of power to obtain a sexual benefit or advantage.’¹It has been said that for sexual extortion, there has to be abuse of authority in the exchange of sex for a service.² Sextortion has also been said to cover instances where someone makes demands with the threat of publishing another person’s sexually embarrassing photos or videos. Sextortion is more about psychological than physical coercion.

¹ International Bar Association, ‘Pressure builds worldwide for legal protection against sextortion’, <<https://www.ibanet.org/Pressure-builds-worldwide-for-legal-protection-against-sextortion>> (Accessed 12/05/2025).

²Center for Gender and Development, ‘Confronting Sextortion’ <<https://ccgdcentre.org/2023/05/30/confronting-sextortion/>> (Accessed 12/05/2025)

(b) Prevalence of Sextortion in Kenya

It has been reported that sextortion affects vulnerable girls and women who seek various services such as national identity cards, supplies of sanitary pads, education, trainings and job placements.³ It has also been reported that sex for fish is very rampant along the coastlines and shores where female fishmongers give in to sexual demands of fishermen so that they can attain the first pick from the boats.⁴ It has further been reported that women and girls are pressured into sex in exchange for water, especially in the slums.⁵ Traders are also not spared with cases of female traders are sexually exploited by brokers and market officials, also having been reported.⁶ One of the hawkers within Nairobi is reported to have informed Members of the County Assembly that she had personally experienced the vice and that "my colleagues have also been told to sleep with these officers to be allowed to hawk without interference".⁷

A report by the Kenya ICT Action Network on the challenges faced by women in Kenya on the internet lists non-consensual distribution of intimate images and sexual harassment as some of the most prominent violations of their rights across digital platforms.⁸ The report further notes that professional and prominent women, including women human rights defenders, women in politics, journalists, women with disabilities and women from marginalised groups, are frequent targets of online gender-based violence. Female politicians in Kenya have been particularly vulnerable to image-based disinformation campaigns that manipulate media to sexualize them.⁹ This makes them fodder for

³ Ibid.

⁴ Ibid.

⁵ Simavi, 'Sextortion: The Silent Pandemic.' <<https://simavi.nl/en/news-and-stories/sextortion-the-silent-pandemic>> (Accessed 12/05/2025)

⁶ Daily Nation, 'Sex for Business Protection: Women Traders Recount Nairobi's Living Hell' <<https://nation.africa/kenya/news/gender/-sex-for-business-protection-women-traders-recount-nairobi-s-living-hell-4488864>> (Accessed 12/05/2025)

⁷ Daily Nation, 'Sex-for-Hawking Space Scandal Rocks City Hall' <<https://epaper.nation.africa/read/release/11079>> (Accessed 14/05/2025)

⁸ ICJ Kenya, 'Protect Women from Rising Online Gender Based Violence', <<https://icj-kenya.org/news/protect-women-from-rising-online-gender-based-violence/>> (Accessed 12/05/2025)

⁹ Ibid

extortion, with certain elements demanding money in order not to release intimate pictures on the internet. While this is common against women, men have also been victims of this form of sextortion. These cases set out the need for urgent legislative intervention to include the offence of sextortion in the Statute Book.

(c) Legal Framework on Sextortion in Kenya

Sextortion has been difficult to prosecute since, as stated in the petition, the existing legislation does not define it or recognize it as a form of sexual offence. The closest offence to sextortion in the Statute Book is sexual harassment created under section 23 of the Sexual Offences Act, Cap. 63A. However, the offence of sexual harassment is limited to instances of employment, education and services offered by public officials. This leaves victims of other types of predators vulnerable.

Section 37 of the Computer Misuse and Cybercrimes Act, Cap. 79 C criminalizes the publishing or distribution of intimate or obscene images of other people without consent. However, the section does not speak to the extortion and blackmail that may be employed with the threat of publishing such images. While the actual publishing is an offence, victims may not wish to have such images published in the first place, hence give in to the extortionists' demands. This is what constitutes sextortion. It is therefore necessary to specifically criminalize sextortion in all its forms.

(d) Conclusion

In view of the foregoing, it is important to amend the law to create an offence that covers all forms of sextortion. KLRC considers the Sexual Offences Act the most appropriate law to amend in order to provide for the offence of sextortion. In addition, KLRC recommends that the proposed new provision should follow section 23 of the Sexual Offences Act which covers sexual harassment and numbered section 23A.

In relation to the proposal to provide support to victims of sextortion, KLRC is of the view that it is not necessary to make any further changes to the law to facilitate support for the victims as the Victim Protection Act, Cap. 79A comprehensively addresses this issue. This statute was enacted to give effect to Article 50(9) of the Constitution and to provide for protection of victims of crime and abuse of power including protection of the dignity of victims through the provision of better information, support services, reparations and compensation from the offender.

2. DECRIMINALISATION OF ATTEMPTED SUICIDE

(a) Introduction

The World Health Organization Policy Brief on the Health Aspects of Decriminalization of Suicide and Suicide Attempts names Kenya as one of only twenty-three countries in the world which still criminalize suicide attempts.

The Brief goes ahead to state that the criminalization of suicide perpetuates an environment that fosters blame and stigmatization towards people who attempt suicide and at the same time fail to recognize the role of social, economic and cultural factors that play a role in suicide and suicide attempts. The Brief further states that the criminalization deters people from seeking timely help and accessing interventions due to the fear of legal repercussions and stigma.

(b) Analysis

The Mental Health Act, Cap. 248 defines a person with mental illness as a person diagnosed by a qualified mental health practitioner to be suffering from mental illness, and includes a person with suicidal ideation or behaviour (*emphasis ours*).

Under the Act, therefore, a person who has attempted suicide would be seen more as a patient needing help than a criminal who should be punished. This was so stated in the

case of *Republic v SWN* (Criminal Case 20 of 2019) [2022] KEHC 3312 (KLR) (7 July 2022) (Sentence) where the High Court held that:

“As the facts patently announce, here is a young woman in need of treatment, care and protection. She is certainly not a deranged criminal in need of retribution and confinement”.

In the above case, the accused person was found to have fatally stabbed her son killing him immediately. She then turned the knife on herself three times in an attempt to kill herself. One of the issues before the court was its role in sentencing an accused person who was mentally ill.

(c) Conclusion

In view of the foregoing, attempting suicide should be decriminalised in Kenya through the repeal of section 226 of the Penal Code and the proposed amendment is timely.

B. PART II-REGULATION OF PROFESSIONALS

1. INTRODUCTION

The KLRC was requested to analyse several legislative proposals seeking to regulate various professions. Before analysing each legislative proposal, this introductory part will address the following questions—

- (a) What is a profession?
- (b) What is the justification for the regulation of professionals?
- (c) What are the various approaches to regulation of professionals?

- (a) What is a profession?

Professionals occupy a position of great importance in the society because they deliver esoteric services to individuals, organizations and the government. The professional space has over the years accelerated as more occupations seek professional identity in addition to the traditionally established professions. In seeking to admit other occupations into the category of professions and setting mechanisms of professional regulation, one must begin by understanding definition and traits of a profession.

Prof. Horton B. (1958) set forth a criterion of a profession which can serve as a yard stick of what constitutes a profession. According to Horton, a profession must—

- (a) “satisfy an indispensable social need and be based upon well established and socially accepted scientific principles;
- (b) demand adequate pre-professional and cultural training;
- (c) demand possession of a body of specialized and systemic knowledge;
- (d) give evidence of needed skills which the public does not possess;
- (e) have developed a scientific technique which is the result of tested experience;
- (f) require the exercise of discretion and judgement in the manner of performance of duty;
- (g) have group consciousness designed to extend scientific knowledge in technical language;
- (h) have sufficient self-impelling power to retain its members throughout life and must be used as a mere stepping stone to other occupations; and
- (i) recognize its obligations to society by insisting that its members live up to an established code of ethics.”

Hughes E. (1968) equally argues that the essence of the idea of professionalism is that professionals profess to know better than their clients on what ails them or their affairs.

Garoupa N (2014) similarly considers a profession as an occupation with the following characteristics: specialised skills, that skill is partially or fully acquired by intellectual training, the service calls for a high degree of integrity, and it involves direct or fiduciary relations with clients.

In essence, a profession can be defined as a disciplined group of individuals, who adhere to ethical standards and who hold themselves out as, and are accepted by the public as possessing special knowledge and skills in a widely recognized body of learning derived from research, education and training at a high level, and who are prepared to apply this knowledge and exercise these skills in the interest of others.

(b) The need to regulate professionals

Regulation of professionals in any given industry is crucial for various reasons including, the need to set uniform standards for the services of that particular profession in order to ensure that consumers of the services are protected; promote accountability and continuous competencies and skills through continuous learning.

The regulation of professional groups has often been justified as being in the public interest with some scholars seeing professional associations and other similar groups as one of the four institutional bases of social order (along with the community, the market, and the state).

(c) Approaches to regulation of professionals

Recent years have witnessed an increase in interest in professional regulation with various models of regulation of professionals emerging. In this memorandum, KLRC will restrict itself to two forms of professional regulation; statutory regulation and self- regulation

(i) Statutory regulation of professionals

Under a typical statutory regulatory scheme, legislation establishes a regulatory authority that is made up of a majority of members either reelected by or appointed from the profession regulated by that authority.

In Australia, these authorities are called 'registration boards', in the United Kingdom they are known as 'Councils' and in various provinces of Canada, 'professional colleges.

These regulatory authorities have powers conferred by statute, to determine qualification and other requirements for registration and to maintain a publicly accessible register of qualified persons. Under this regime, it is an offence for an unregistered person to use those professional titles reserved for the profession.

The relevant statute sets also up a disciplinary system that, in most cases, empowers the regulatory authority to investigate complaints of professional misconduct and to impose sanctions on a practitioner, including deregistration if necessary. The effect of the regulatory scheme is to create an enforceable barrier to entry to the regulated profession and to regulate the standards of practice and conduct of registered practitioners.

(ii) Self-regulation' or peer review model

The term 'self-regulation' is used to describe the disciplining of one's own conduct by oneself. Self-regulation as an approach to professional regulation is widely used in professions, sports¹⁰, the press, advertising and financial services. This model of regulation varies from the 'command and control' model of regulation exhibited by the former model to regulation by the market. It enshrines the principle that a practitioner's peers are in the best position to judge what constitutes professional and unprofessional conduct and enables professional bodies or associations to govern their members in a manner that ensures that they are not subject to undue influence from the State or other external pressures.

¹⁰International Olympic Committee (IOC), Federation Internationale de Football Association (FIFA), World Athletics (formerly IAAF), the International Bar Association (IBA), World Medical Association, are examples of self-regulating bodies.

Self-regulation, may not require legislation to be effective as the professionals have the liberty to develop desirable instruments to guide their governance frameworks and code of conduct; however, where legislation is desired, it may be seen as a contract between professionals and the state to regulate a field of activity and a group of practitioners for the benefit of society. ✂

2. REGULATION OF ROBOTICS AND ARTIFICIAL INTELLIGENCE IN KENYA

The proposed Robotics and Artificial Intelligence Society is envisioned as a professional body meant to assist in the regulation, promotion and facilitation of the activities of robotics and artificial intelligence practices in Kenya.

Many countries have leveraged the power of robotics and artificial intelligence to achieve various feats. For instance, in education, AI has the power to transform and influence training. In agriculture, robotics and AI has the ability to provide farmers with real-time observations from their farmlands which can be used to quickly identify crop or pest diseases, increase yields, thereby increasing food productivity. In security, the efficient personnel deployment and vision systems that aid in tracking criminals and the analysis of crime data helps security personnel in solving many cases. In banking and finance, AI has been used to revolutionize the use of mobile money services.

In health, great advances have been made with regards to AI and its applications in the sector. AI's deep learning medical tools assist medical professionals by studying a patient's unstructured data to give a better insight into a patient's real-time needs.

In this regard, there is need to develop a framework that will enable the development of standards and certain codes of conduct for owners and owners of robot agents.

The enactment of the Robotics and Artificial Intelligence Society Bill is intended to establish the Society as a professional body whose mandate, just like other professional bodies, will majorly be to promote standards of professional competence and practice

among members of the Society; promote research into the subject of robotics and artificial intelligence; promote international recognition of the Society; and advise the Cabinet Secretary on matters relating to standards and policies in the area of robotics and artificial intelligence in all sectors of the Kenyan economy.

This is a great step in ensuring regulation of the profession. However, there is also need to enact a comprehensive piece of legislation which would provide a legal and institutional framework for the development of the robotics and artificial intelligence in Kenya (such as a Kenya Robotics and Artificial Intelligence Act). This law would provide for among others, the development and implementation of policies on use of robotics and artificial intelligence; research and development in the robotics and artificial intelligence; education and training in the field of robotics and artificial intelligence and the regulation of concerns relating to safety, security and civil rights as well as the whole spectrum of robotics and artificial intelligence in Kenya.

With this general framework in place, the establishment of the Society would augment the efforts espoused in that framework to ensure a robust robotics and artificial intelligence profession in Kenya.

3. REGULATION OF BANKING PROFESSIONALS IN KENYA

The banking industry is the cornerstone of a country's economy. In Kenya, the industry is regulated by the Central Bank of Kenya (CBK) through the Banking Act, Cap. 488, the Central Bank of Kenya Act, Cap. 491 and the attendant Regulations.

To ensure effective service delivery, the banking industry must adapt to evolving needs of the society by addressing the key issues in the industry. Over the years, the government has demonstrated its commitment towards strengthening the banking sector.

However, Kenya, just like other developing countries, is yet to establish a regulatory body for professional bankers. This analysis aims to assess whether there is a need to

regulate professional bankers in Kenya and the key considerations in establishing a professional body.

Having carefully analysed the petition KLRC is of the considered opinion the proposed development of the Bankers Professional Bill is justified to ensure that the banking industry is properly regulated.

The proposed bill would give the Kenya Bankers Association the necessary legal impetus. The legal framework should however, clearly establish the necessary governance structure and qualifications for membership.

Although the Banking Act, Cap. 488 creates an offence against a banking officer who engages in fraudulent and reckless activities, the proposed professional body will ensure that disciplinary action is taken against the responsible officer. This will promote accountability and ensure that the public has confidence in the industry. A professional body will similarly help in setting the ethical standards of professionals in the sector.

4. REGULATION OF CREDIT PROFESSIONALS IN KENYA

Credit is a form of agreement between two parties in which the creditor or lender, gives money, goods, services, or securities in return for a promised future payment by the debtor or borrower. The lender earns a profit by getting interest on the borrowed amount from the creditor. In Kenya, there has been a rise in the number of credit professionals who offer credit at exorbitant interest rates.

Due to ineffective regulation of the credit industry, there have been numerous complaints from borrowers including;

- a) Unfairly high interest rates;
- b) Hidden and unreasonable methods of computing interest and oppressive penalties;
- c) Use of irregular enforcement of security interest over assets of the borrowers;
- d) Harassment; and

- e) Breach of privacy, humiliation and stressful relationship between the borrowers and the lenders.

There are some provisions in the Consumer Protection Act which provide for unfair lending practices, rescission of agreements where there is unfair practice, default charges and penalties chargeable by providers of credit. The Act also sets out various rights of consumers including the right to prepayment so that lenders cannot prohibit prepayment of loans and the right to statements on the loans.

The Business Laws (Amendment Act) 2024 amended among others, the Central Bank of Kenya Act, Cap 491, Laws of Kenya and the Microfinance Act, Cap 493C, Laws of Kenya to extend the regulatory oversight of the Central Bank of Kenya to credit providers that were previously not subject to CBK's oversight.

Previously, non-deposit taking credit providers were not under the regulatory oversight of the CBK. The Business Laws (Amendment) Act 2024 replaced the definition of digital credit providers under the CBK Act with non-deposit taking credit providers. This means that credit providers that were previously unregulated now fall under the regulatory oversight of the CBK regardless of the medium through which they offer their credit services.

Despite the fragmented efforts to regulate some elements of the credit industry, there is still need for a robust and comprehensive legal framework to address pertinent issues especially professionalism in the industry.

Regulation of the credit profession involves controlling the access to the credit practice by means of registration and certification or licensure. The aim is to ensure that credit professionals provide services in a competent, ethical and safe manner. This will guarantee quality credit services at affordable interest rates.

The appropriate model of credit profession regulation is self-regulation. This means the regulation of the profession by itself. The credit profession may be regulated by a professional body vested with statutory powers under legislation. These self-regulatory powers and functions include registration and certification or licensure of the credit profession's members.

5. REGULATION OF GEOPHYSICS PROFESSIONALS IN KENYA

Geophysics is a specialized field of Earth science that applies principles of physics, mathematics, and engineering to study the Earth's subsurface. Geophysical professionals, commonly referred to as geophysicists, use advanced techniques to detect and measure physical properties such as seismic waves, gravitational and magnetic fields, and electrical conductivity. Their work is critical in areas such as oil and gas exploration, groundwater mapping, mineral prospecting, infrastructure development, environmental protection, and natural disaster forecasting.

Despite the significance of geophysics in Kenya's socioeconomic development, there is currently no law governing or regulating geophysicists as a distinct professional group. The Kenya Society of Geophysical Professionals has consistently advocated for the formal recognition and regulation of the profession through an appropriate legal framework.

This response sets out the case for the establishment of a Geophysical Professional Bill, which would lead to the creation of a statutory body to regulate the profession.

Geophysics qualifies as a profession by all measures. Geophysicists are experts trained to interpret the Earth's physical characteristics. Their work underpins major national interests, including natural resource development, environmental sustainability, and disaster resilience. Their skills have a direct impact on public safety, economic growth, and environmental conservation.

The regulation of geophysical professionals is not merely a matter of professional pride—it is a public interest imperative. The lack of a legal framework exposes the public and the environment to significant risks due to:

- (a) Unqualified practitioners conducting critical surveys that can compromise public safety (e.g., building on unstable ground);
- (b) Misrepresentation of geophysical data, which can mislead major infrastructure, mining, and water projects;
- (c) Environmental harm, especially where electromagnetic and seismic surveys are poorly conducted; and
- (d) Lack of accountability, leading to reputational and financial losses for both the public and private sectors.

State regulation through an Act of Parliament would:

- (a) Establish minimum academic and ethical standards for practice;
- (b) Create a register of licensed professionals;
- (c) Promote continued professional development;
- (d) Enable the enforcement of a code of ethics;
- (e) Provide disciplinary procedures to sanction professional misconduct;
- (f) Enhance public confidence in the profession and in geophysical outputs used for planning and development.

In many jurisdictions, geophysicists are regulated alongside geologists and surveyors, professions already governed under Kenya's Geologists Registration Act (Cap. 535) and Survey Act, respectively. Kenya now lags behind in recognizing geophysicists as distinct professionals, yet their role continues to expand across critical sectors.

Geophysical professionals perform work that directly affects public safety, natural resource management, environmental protection, and infrastructure development. To preserve the integrity of this vital profession and protect national interest, there is a compelling case for enacting a Geophysical Professionals Act. Regulation through statute

will elevate the profession, ensure quality, uphold ethics, and protect both the public and the environment from substandard or unethical practice.

The proposed Geophysical Professionals Bill should:

- (a) Establish a statutory body to license and regulate the practice of geophysics in Kenya;
- (b) Define the scope of professional geophysical practice;
- (c) Set educational and ethical standards;
- (d) Protect the public, the environment, and national economic interests; and
- (e) Promote research, innovation, and international alignment.

C. PART III-GENERAL

1. LEGISLATION FOR THE DEVELOPMENT OF IRRIGATION INFRASTRUCTURE

Kenya's agriculture sector remains the backbone of the national economy. It contributes approximately 22.4% to the Gross Domestic Product (GDP), employs over 40% of the total population and more than 70% of Kenya's rural population. The sector is particularly vulnerable to the effects of climate change, erratic rainfall and land degradation, which continue to undermine food security, economic resilience and social stability.

The Petition raises a legitimate concern over the limited development of irrigation infrastructure in Kenya, noting that—

- Only about 4% of Kenya's arable land is under irrigation;
- Two-thirds of Kenya's land mass is classified as arid or semi-arid (ASAL), yet these areas are home to communities that would benefit greatly from irrigated agriculture;
- The existing policy and legal framework do not provide mechanisms for equitable, constituency-level implementation of irrigation projects.

The Petition rightly identifies a gap in equitable infrastructure development and the need for mechanisms to support grassroots implementation and community ownership as

further elucidated in the Kenya Kwanza manifesto. However, the legal strategy proposed that is by amending the Road Maintenance Levy Fund Act to support irrigation infrastructure, raises significant issues of legal coherence, functional clarity and constitutional consistency that must be addressed through a broader policy and institutional lens.

(a) Analysis

Overview of the Petitioner's Proposals

The Petitioner proposes that—

- Parliament amends the Road Maintenance Levy Fund Act, 1993, to expand its mandate into a broader Infrastructure Development and Maintenance Fund;
- A portion of this expanded fund be dedicated to the development of irrigation infrastructure in all 290 constituencies;
- Funds be administered by the National Irrigation Authority (NIA), in collaboration with other relevant public agencies.

Constitutional and Institutional Issues Arising

This proposal, while innovative, raises four critical issues:

- **Functional Integrity and Sectoral Clarity** - The proposal conflates two distinct functions—roads and irrigation—which fall under separate mandates in the Fourth Schedule of the Constitution. Road maintenance is a concurrent function where at the national level, the function is administered by road authorities such as KeNHA, KeRRA, KURA and the Kenya Roads Board (KRB) while the county roads are administered by the county governments. Irrigation on the other hand irrigation is primarily a county function under agriculture, except where national interests or transboundary issues are involved.
- **Earmarked Funds and Purpose-Specific Legislation** - The Road Maintenance Levy Fund (RMLF) is a ring-fenced fund created under statute for a specific

and limited purpose: to finance the maintenance of public roads. Expanding its use for unrelated purposes such as irrigation risks violating the principle of purpose-specific financing, undermining sectoral planning and resource predictability.

- Institutional Coordination and Overlap - Assigning the role of implementing constituency-level irrigation projects to the NIA, a national agency, without involving county governments, introduces institutional overlap, undermines the devolved system of governance and contradicts established planning and accountability frameworks under the County Governments Act, 2012 and the Intergovernmental Relations Act, 2012.
- Governance, Accountability, and Legal Risks - Repurposing a fund established by law for a completely different sector may expose the Government to legal challenges and reduce public confidence in the consistency and predictability of fiscal legislation. It may also lead to audit queries and institutional confusion.

(b) Considerations and Proposed Approach

Policy Must Precede Legislation

One of the cardinal principles of legislative development is that policy must inform law. Article 10 of the Constitution obliges all public institutions to observe the principles of good governance, transparency and accountability. Laws enacted in the absence of a clear and coherent policy basis tend to suffer from poor implementation, stakeholder resistance and legal contradictions.

The current National Irrigation Policy (2017) provides a foundation for addressing the larger issue that the petition did not clear bring out and that is that there is a lack of

sufficient, reliable and sustainable form of financing for irrigation for agriculture. In addition, our review of the policy indicates that it may does not fully incorporate—

- The realities of devolution and the increasing role of counties in local irrigation planning;
- The Government’s current development blueprint—the Bottom-Up Economic Transformation Agenda (BETA);
- Climate change adaptation and resilience as a national imperative; and
- New financing models such as blended finance, development partnerships and conditional grants.

Before any legislation is amended or introduced in order to therefore provide for the broader issue, we propose that there is a need for the policy framework to be updated, validated through public and stakeholder participation and formally adopted by Cabinet.

Risks of Expanding the Road Maintenance Levy Fund

KLRC advises against amending the Road Maintenance Levy Fund Act to introduce an unrelated function. The rationale is as follows:

- Violation of Sector-Specific Planning – The RMLF was created to address the challenge of deteriorating road infrastructure by providing a consistent and predictable source of maintenance funds. Diverting its proceeds to other sectors undermines this purpose, may delay road maintenance projects and complicates long-term sector planning.
- Erosion of Legislative Integrity - Amending a statute for an unrelated purpose undermines the logic and coherence of the legislative framework and may lead to legal uncertainty, stakeholder resistance, and institutional disputes over mandates.

- **Undermining Devolution** - By proposing to bypass county governments in the financing and execution of local irrigation projects, the proposal contradicts Article 6(2) and the Fourth Schedule of the Constitution, which assigns irrigation and agriculture to county governments. It risks centralising functions that ought to be implemented locally, with full public participation and contextual understanding. The other risk is the introduction of multiple implementing bodies at the county government level, if the object of the proposal is that Members of Parliament would be responsible for the projects initiated under the amended legal regime.
- **Precedent for Further Misalignment** - Allowing this amendment could set a problematic precedent where other earmarked funds (e.g., for health, housing, or education) are similarly targeted for unrelated sectors, thereby destabilising Kenya's carefully constructed fiscal architecture.

(c) Proposed Alternative Framework for Achieving the Petition's Objective

KLRC fully acknowledges the valid policy concern raised by the Petition—Kenya urgently needs a more inclusive, equitable and sustainable approach to irrigation infrastructure development. However, the strategy to achieve this must be institutionally sound, constitutionally aligned and fiscally sustainable. We therefore propose the following approach, rationalised on our consideration of the merits of the proposal.

Step 1: Review and Update the National Irrigation Policy (2017)

The Ministry of Water, Sanitation and Irrigation, in collaboration with the county governments, NIA and key national bodies, including KLRC and development partners, should lead a review of the national irrigation policy to—

- Clarify the roles of national and county governments;
- Outline mechanisms for intergovernmental collaboration and financing;
- Promote pro-poor, community-led, and climate-resilient irrigation models;

- Establish equitable criteria for national investment in county-based irrigation projects;
- Integrate national development goals under BETA and Vision 2030.

Step 2: Develop a Dedicated Legislative Financing Framework

Following the revised policy, Parliament may consider legislation to:

- Establish a National Irrigation Infrastructure Development Fund under the Public Finance Management Act, 2012, structured as a conditional grant to counties;
- Amend the Irrigation Act, 2019, to include provisions on collaborative planning, equitable targeting and a public participatory process for selecting irrigation projects;
- Provide for transparent criteria, performance monitoring and public reporting mechanisms to promote integrity and accountability.

A. Step 3: Institutional Collaboration through Intergovernmental Frameworks

Rather than bypassing counties or implementing the policy proposals through Members of Parliament, the revised approach should:

- Leverage Article 189 of the Constitution and the Intergovernmental Relations Act to foster coordinated service delivery;
- Use platforms such as the Intergovernmental Budget and Economic Council (IBEC) and the Summit to agree on priorities, standards and financing modalities;
- Engage community-level stakeholders to ensure that irrigation initiatives respond to local needs and conditions.

(d) Conclusions and Recommendations

In conclusion, KLRC affirms the substantive concerns raised by the Petition regarding the inadequacy of irrigation infrastructure in Kenya. However, we dutifully submit that the proposed legislative pathway—through amendment of the Road Maintenance Levy Fund Act—is legally unsound, constitutionally problematic and institutionally risky.

We therefore make the following recommendations:

- Parliament should not adopt the proposed amendment to the Road Maintenance Levy Fund Act, 1993 as a legislative mechanism for financing irrigation projects;
- Parliament to direct for a comprehensive review of the National Irrigation Policy (2017) to align it with the Constitution, BETA priorities and intergovernmental frameworks;
- The responsible Ministry, KLRC and other relevant national and county government organs to thereafter develop appropriate legislation that is anchored in the revised policy, to establish a dedicated and transparent irrigation infrastructure financing mechanism;

The process to achieve the above should be facilitative and inclusive embodied by participatory law and policy reform process that engages all relevant sector players.

As always, we remain committed to upholding the principles of democratic governance and the rule of law in Kenya by supporting every effort to improve our laws in response to the social, economic and political needs of the country.

2. REVIEW OF THE PROLIFERATION OF LGBTQ RIGHTS IN THE COUNTRY

(a) The Concept of LGBTQ

The term LGBTQ is an alphabetism for lesbian, gay, bisexual, transgender, queer or questioning. LGBTQ can be interpreted in at least two ways:

- 1) *Broad interpretation:* LGBTQ is often used as an umbrella term to refer to people whose sexual orientation and gender do not conform to the cultural expectations of their society.
- 2) *Narrow interpretation:* LGBTQ is also used to refer specifically to lesbian, gay, bisexual or transgender people. Additional terms can be included to explicitly

communicate their inclusion, such as queer, questioning, intersex, asexual and two spirit.

(b) Pronouncements by the Courts on the position of LGBTQ in Kenyan laws

The courts have had occasion to pronounce themselves on LGBTQ matters as analysed below.

EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae) [2019] KEHC 11288 (KLR)

The petitioners initiated legal proceedings challenging *Sections 162(a), 162(c) and 165 of the Penal Code, Cap. 63*. These sections prohibit what are termed "unnatural offences" and acts of "gross indecency," which have historically been interpreted and applied to criminalize consensual same-sex sexual activity. The Petitioners contended that these provisions were unconstitutional on several grounds.

Primarily, the petitioner argued that the sections were void for vagueness, lacking clear definitions of the prohibited conduct. Furthermore, the Petitioners asserted that the provisions violated the rights to non-discrimination, human dignity and privacy as guaranteed by the Constitution.

The case was consolidated with another similar petition, Petition 234 of 2016, as both raised common issues regarding the impact of these Penal Code sections on individuals who do not conform to societal expectations of gender identity, expression or sexual orientation.

The respondents submitted that the petitioners were attempting to use the judicial process to legitimize acts that were deemed indecent and to create rights not explicitly recognized in the Constitution. It was further argued that the criminalization of

homosexuality fell within the bounds of the law and that individual liberty could be legitimately curtailed when it conflicted with the common good and public policy.

The respondent also highlighted that during the drafting of the 2010 Constitution, the issue of same-sex relationships was considered, but there was no consensus or desire to legalize them. As a result, Article 45(2) of the Constitution specifically recognizes heterosexual marriage. It was argued that permitting consensual, private same-sex relations would implicitly lead to same-sex couples cohabiting, which would contradict the spirit and intent of the Constitution as drafted.

The High Court held: -

On the issue of vagueness, the Court acknowledged that while the Penal Code sections in question did not explicitly define terms like "unnatural offences" or "against the order of nature," these phrases had been defined in legal dictionaries and prior judicial pronouncements.

Therefore, the Court concluded that the lack of explicit definitions within the statute itself did not render the provisions unconstitutionally vague. The Court also accepted the principle that fundamental rights and freedoms, while guaranteed, are not absolute and may be limited to prevent prejudice to the rights and freedoms of others.

The Court placed significant weight on the intent of the legislature and the perceived social values of Kenya. It was stated that the court had a responsibility to uphold positive African cultural values and contribute to the moral well-being of society. The Court's interpretation of *Article 45(2) of the Constitution*, which recognizes heterosexual marriage, was also crucial.

The Court reasoned that if there had been a desire by the Kenyan people to protect and recognize same-sex relationships, this would have been reflected in the drafting of the 2010 Constitution. Consequently, allowing consensual, private same-sex relations would

contradict this perceived intent. The High Court in this case dismissed the case, upholding the constitutionality of the challenged provisions of the Penal Code.

NGOs Co-ordination Board v EG & 4 others; Katiba Institute (Amicus Curiae) (Petition 16 of 2019) [2023] KESC 17 (KLR)

Facts

The case originated from the decision of the Non-Governmental Organizations Co-ordination Board (NGO Board) to reject the registration of a proposed organization aimed at addressing the violence and human rights abuses suffered by the Lesbian, Gay, Bisexual, Transgender, Queer or Questioning (LGBTQ) persons in Kenya.

In a letter dated 25th March, 2015, the NGO Board refused to reserve any of the names proposed by Mr. Eric Gitari for this organization. The Board's Executive Director justified this refusal by citing *Sections 162, 163 and 165 of the Penal Code*, which criminalize certain sexual acts, implying that the proposed organization's focus was illegal.

Aggrieved by this decision, Mr. Gitari initiated legal action by filing High Court Petition No. 440 of 2013. He contended that the NGO Board's actions violated several articles of the Constitution, including *Article 20 (2), Article 27(4), Article 28 and Article 36*, as well as provisions of the NGO Coordination Act.

His core argument was that the refusal to register the organization, based on its focus on LGBTIQ rights and its proposed name, infringed upon the constitutional rights to freedom of association and non-discrimination.

Issues

The central issues of the case include:

- 1) Whether LGBTQ individuals possess the right to form associations in accordance with the law in Kenya;

- 2) If the answer to the first issue is affirmative, whether the NGO Board's decision to refuse the registration of the proposed NGO solely based on the choice of name and the perceived nature of the organization constituted a violation of the fundamental rights to freedom of association and non-discrimination as guaranteed by the Constitution; and
- 3) Whether the First Respondent, Eric Gitari, was required to exhaust internal dispute resolution mechanisms available under the NGO Coordination Act before filing his case in the High Court.

The High Court, in a decision by a three-judge bench, ruled in favour of Mr. Gitari. The court found that the limitation placed on the freedom of association for LGBTQ individuals by the NGO Board was not justifiable under *Article 24 of the Constitution*. The court held that while *Sections 162, 163, and 165 of the Penal Code* criminalize specific homosexual acts, they do not criminalize sexual orientation itself. Therefore, relying on these sections to restrict the registration of the organization was deemed unreasonable.

Regarding *Article 27* on non-discrimination, the High Court noted that the Board's objection extended beyond just the name to include the stated objects and purpose of the proposed NGO. The court held that interpreting *Article 27* in a manner that excludes individuals based on their sexual orientation would contradict fundamental constitutional principles such as human dignity, inclusiveness, equality, human rights, and non-discrimination.

The court concluded that the Board's attempt to reject the organization's formation on the grounds of furthering an "illegality" simply because it disapproved of the organization's objectives amounted to an infringement of the freedom of association.

In the end the Judges noted-

“In conclusion, therefore, having considered the arguments on both sides, the precedents cited, the Constitution and the law, we are not satisfied that the Petitioners’ attack on the constitutional validity of sections 162 and 165 of the Penal Code is sustainable. We find that the impugned sections are not unconstitutional. Accordingly, the consolidated Petitions have no merit. We hereby decline the reliefs sought and dismiss the consolidated Petitions”

Dissatisfied with the High Court's decision, the NGO Board lodged an appeal at the Court of Appeal. The appellate court, by a majority decision, dismissed the appeal and affirmed the High Court's ruling. The majority concluded that by refusing to register the NGO, Mr. Gitari was effectively "convicted" before contravening any law, and they characterized such an action as "retrogressive."

The two dissenting judges, however, held a different view. They argued that the freedom of association is subject to limitations as specified in the Constitution and that *Article 27(4)* specifically prohibits discrimination based on gender, but not sexual orientation. These dissenting judges maintained that since current laws in Kenya do not permit homosexual practices, the rejection of the proposed NGO registration was lawful.

Determination of the Supreme Court

The Court (majority decision) found that Mr. Gitari's intention was to register an organization to advocate for the rights of LGBTQ individuals, and this objective was not directly linked to the specific offenses described in *Sections 162, 163, and 165 of the Penal Code*.

As such, the Supreme Court agreed with the reasoning of both the High Court and the Court of Appeal, affirming that LGBTQ people, like all other individuals, have a fundamental right to freedom of association, which includes the right to form any kind of association.

The Supreme court when addressing the final issue, whether the Board's decision was discriminatory and contravened *Article 27*, the Supreme Court definitively ruled that the Board's refusal to register the organization focused on LGBTQ rights was indeed discriminatory.

The Court held that the word "Sex" as used in *Article 27 of the Constitution* encompasses sexual orientation. The Supreme Court upheld the High Court's position that any interpretation of the Constitution that excludes individuals based on their sexual orientation is inherently discriminatory. Based on these determinations, the Supreme Court dismissed the appeal, upholding the decisions of the lower courts and reinforcing the constitutional rights of LGBTQ individuals to freedom of association and protection from discrimination.

In a dissenting opinion, Ibrahim and Ouko SCJJ noted that –

“...But a more pragmatic approach towards opening up the door for registration of the group would be to introduce legislative reforms, including amendment to the Penal Code and repeal of sections 162, 163 and 165 to decriminalise acts contemplated by those provisions based on the will and desire of the people of Kenya. That was the course adopted by many countries around the world. Social attitudes and concerns were constantly evolving. Lawmakers, as representatives of the people created, modified and repealed laws to achieve particular behavioural outcomes, often in an effort to respond to perceived changes in the society. The decision to repeal or amend those laws to accommodate LGBTQI community in Kenya was one that could only be made by the people from whom all sovereign power flowed or by their elected representatives and only after the involvement of the people.

Though the language of article 27 of the Constitution was plain, the basic rule of constitutional interpretation was that the Constitution had to be given a holistic interpretation. Holistic interpretation had been described as interpreting the

Constitution in context. It was contextual analysis of a constitutional provision, reading it alongside and against other provisions, to maintain a rational explication of what the Constitution had to be taken to mean in the light of its history, of the issues in dispute, and of the prevailing circumstances. There was a clear distinction between 'sex' and 'sexual orientation'. Sexual orientation referred to each person's capacity for emotional, affectional and sexual attraction to, and intimate sexual relations with individuals of a different gender or the same gender or more than one gender

The word sex was used three times in the Constitution; in the article 27, in article 42(2) on the right to marry a person of the opposite sex and article 53(1)(f)(ii) on the detention in custody of a child, in conditions that took account of the child's sex. In the context of those articles, sex was used in reference to a person's sexual anatomy based on one's sex chromosomes- (male/female). The discrimination that was expressly prohibited by article 27 was on account of sex and not sexual orientation."

- (c) Law Reform issues emanating from the Supreme Court's Judgement and proposed legislative reforms

As identified in the judgement in *NGOs Co-ordination Board v EG & 4 others; Katiba Institute (Amicus Curiae)* (Petition 16 of 2019) [2023] KESC 17 (KLR), the main contention was unbundling the definition of sex and whether to include sexual orientation in the definition of sex in Article 27(4).

The said provision states –

"27(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth."

According to the Supreme Court majority decision the use of the word “sex” under article 27(4) of the Constitution did not connote the act of sex *per se* but referred to the sexual orientation of any gender, whether heterosexual, lesbian, gay, intersex or otherwise. Further, the word “including” under the same article was not exhaustive, but only illustrative and would also comprise freedom from discrimination based on a person’s sexual orientation. Therefore, an interpretation of non-discrimination which excluded people based on their sexual orientation would conflict with the principles of human dignity, inclusiveness, equality, human rights and non-discrimination.

In the opinion of the dissenting Judges, there was nothing whatsoever in article 27(4) of the Constitution or on a reading of the Constitution as a whole which suggested that the framers of the Constitution were addressing their minds in any way whatever to problems of discrimination on grounds of sexual orientation. Had that been the intention, nothing could have been easier than to state so as had been done in some of the constitutions, statutes and international instruments. The intention was to prohibit discrimination based on the consideration whether a person was male or female. They further averred that in other jurisdictions, where the right against discrimination was meant to include sexual orientation, it had been expressly stated as such in either the statutes or the national constitutions of those countries.

From the reading of the decisions in the superior courts, it is clear that they are not all agreed on the import of the provisions of the Constitution and the Penal Code on same sex relations and LGBTQ in general. As noted by the Supreme Court Judges, lawmakers, as representatives of the people have the power to create, modify and repeal laws to achieve particular behavioural outcomes, often in an effort to respond to perceived changes in the society. The decision to repeal or amend those laws to accommodate the LGBTQ community in Kenya is one that could only be made by the people from whom all sovereign power flowed or by their elected representatives and only after the involvement of the people.

One such instance is through the Family Protection Bill sponsored by Hon. Kaluma which seeks to provide for the protection of the family in furtherance of Article 45 of the Constitution, to prohibit homosexuality and same sex marriage, to prohibit unnatural sexual acts and related activities and to proscribe activities that seek to advance, advocate, promote or fund homosexuality and unnatural sexual acts.

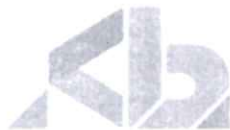
The Bill specifically unbundles the term sex by seeking to define it as the biological state of being male or female as physically observed and assigned at birth, or as medically determined and assigned by the time the person reaches puberty. The proposed definition proposes to specifically exclude sexual orientation and gender identity. This would cure the confusion on whether "sex" as set out in the Constitution includes "sexual orientation" without explicitly stating so.

The Bill also seeks to prohibit sexual acts and other activities among persons of the same sex, same sex marriage, unnatural sexual activities and procuring of prohibited sexual activities by false pretences, detention with the intent to commit prohibited sexual activity among others. It also makes it an offence to establish premises for prohibited sexual activity, and prohibits grossly indecent acts. It prohibits sex reassignment prescriptions or procedures and the promotion or funding of prohibited activities and proposes to penalize any breach including fines, jail terms, deregistration of associations and cancellation of licences issued to businesses that promote or host prohibited activities within their premises.

Enactment of this legislation or any other legislation in this respect would create more clarity and therefore guide the courts in the interpretation of Article 27(4) as read with Article 43 of the Constitution.

D. CONCLUSION

In conclusion, KLRC is committed to ensuring that legislations are drafted and/or amended to the highest possible standards to promote their effectiveness as well as ensure their clarity and intelligibility to their intended users.



KENYA BANKERS

ASSOCIATION

The Honourable
Clerk of the National Assembly
Main Parliament Building
Public Petitions Committee
P. O. Box 41842-00100
NAIROBI

10th September 2024

Dear Mr. Samuel Njoroge, CBS

KENYA BANKERS ASSOCIATION SUBMISSIONS ON THE PETITIONS ON THE INSTITUTE OF BANKERS PROFESSIONAL BILL, AND THE CREDIT PROFESSIONALS BILL

We acknowledge your letter dated 27th August 2024 inviting the Association to provide the industry feedback on the petitions seeking to introduce the two bills.

The Kenya Bankers Association brings together all commercial banks in Kenya to realize economic empowerment, create employment opportunities and wealth for individuals, households, businesses and the country.

The proposed Bills: Credit Professionals Bill and Institute of Bankers Professional Bill will hinder and limit economic growth, employment opportunities and wealth creations for individuals, households, and businesses.

The Bills as proposed are non-existent in any developed or developing country. They are bad for the economy, destructive to careers and create exclusive clubs limiting entry at all levels.

1. What is a profession?

Oxford Dictionary: "a profession is any type of work that needs special training or a particular skill, often one that is respected because it involves a high level of education: teaching profession; lawyers; doctors... jobs that need special training and skill, such as being a doctor or lawyer, but not work in business or industry."

2. What is banking?

Section 2 of Banking Act Cap 488 Laws of Kenya "bank" means a company which carries on, or proposes to carry on, banking business in Kenya but does not include the Central Bank;



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“banking business” means— (a) the accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice; (b) the accepting from members of the public of money on current account and payment on and acceptance of cheques; (c) the employing of money held on deposit or on current account, or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money; and (d) such other business activity as the Central Bank may prescribe.

3. What problem(s) are the two bills addressing that are not addressed by current laws and regulations. I find none, as an industry, an economy and country we seek to be persuaded by the petitioners of the Bills.

Consequently, Kenya Bankers Association opposes the enactment of the two Bills in their entirety based on the following:

1. Scope

Banking is not a profession; it is a business/ industry and sector as clearly defined in section 2 of the Banking Act Cap 488 Laws of Kenya.

The banking industry comprise of staff from different professions (over 50 different professions) including *cyber security, engineers, ICT, lawyers, human resource, accountants, procurement, economists, compliance, insurance, audit, credit, customer service, data science, sales, marketing, religious, surveyors, logistics among others* most of which are already regulated by their primary professional bodies such as the Law Society of Kenya (LSK), Institute of Human Resource Management (IHRM), Public Relations Society of Kenya (PRSK), Institute of Certified Public Accountants of Kenya (ICPAK) , among others.

How will the proposed Bills cater to the 50 diverse professionals in the banking sector given their varied and distinct skill sets and backgrounds. With the significant differences in expertise, developing training programs and CPD structures that accommodate all these professionals will create duplicity and disharmony amongst the professional bodies.

On the proposed Credit Professionals Bill, the credit function in banks is broad and every staff in a bank is in one way or another involved in a credit related function or deliverable. Starting



with sales agents, account opening, customer service, lawyers, operations, credit, digital teams up to and including the Chief Executive Officer and the Board.

All bank staff are involved in credit administration and the petitioners have not provided a criterion to determine who a credit staff/ professional is.

2. Presence of Existing Regulatory Bodies within the Banking Sector

The Central Bank of Kenya primarily regulate the Banking Industry, under the Banking Act and Prudential Guidelines governing banks and individual bankers providing round the clock regulations of banking business in Kenya including Consumer Protection. Additionally, there are several regulators that undertake consumer protection including Competition Authority, Financial Reporting Centre, Office of the Data Protection, among others.

Introducing further certification requirements for bankers renders Kenya uncompetitive for business and banking being a business. Banks would have the option of fully automating operations to limit the unnecessary compliance and expenses for certification and CPDs and outsource human capital from other jurisdictions through the shared services framework.

Banks as businesses cannot be compelled to have credit staff based in-country. All the operational credit and analysis thereof will be automated or undertaken by staff outside Kenya. By enacting these two BILLS we will be exporting employment outside Kenya and aggravate Kenya's unemployment challenge which as KBA we exist to bridge directly as an industry and indirectly by financing individuals and businesses.

Over-regulation stifles innovation and competition within the industry and the economy. Existing regulatory bodies provide adequate and necessary oversight. Any gap must be addressed through an amendment to the existing legal framework and avoid the creation of more parastatals and state agencies when the public is seeking for lean government in their lives.

3. Conflict in Uniformity of Credit Standards

Banking business is all about credit provision and it is a competitive area that has to be regulated as such for the benefit of customers. We have banks, microfinance banks, sacco, credit only providers, digital credit providers only, retail stores, shy locks all providing credit. How will the Credit Professionals law establish uniform credit standards for all these financial institutions and businesses that are already regulated.



The diverse credit providers in the market cater for the different society needs and implementing a one-size-fits-all approach to credit standards will deny credit to the underserved.

4. Compliance Burden:

The Banking industry comprise of staff from different professions already regulated by their specific primary professional bodies including Law Society of Kenya (LSK), Institute of Human Resource Management (IHRM) and the Institute of Certified Public Accountant of Kenya (ICPAK), which is a cost to professionals and businesses already in meeting CPD training requirements, maintain practicing certificates and pay for the annual subscription fees required.

Remember you must maintain these professional certifications and CPDs even while seeking entry level roles or while out of employment looking for job opportunities. Including private consultancies. **The introduction of additional certification requirements will intensify this burden for individuals seeking employment or in employment and additional cost to employers.** Banks staff will stop working and be in full time pursuit of CPD trainings for the following years certifications when 1 staff is in 4 different professional institutes some in expensive addresses like South Coast and North Coast.

5. Barriers to Entry:

Staff recruitment from other sectors of the economy to banking will stop once the Bill is assented to by the President. The Bill introduces academic and professional certifications hence individuals without these certifications will be unqualified to join banking.

This will limit employment opportunities for the public to banking when the banking industry is the leader in being the best industry to work in and the best paying industry. Additionally, the Credit Professional law, will limit internal bank staff cross-functional movements and promotions, such as moving an operations staff to a credit role, will be hindered by the need for these certifications.

The Bills create barriers to entry and promote unnecessary bureaucracy in professional bodies, limiting the banking sector's flexibility and dynamism. The focus should remain on practical experience and adaptable skills rather than prescriptive academic and professional qualifications.



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6. Cross-functional and Cross-sector Employment:

If every industry adopts similar legislation (*manufacturing, insurance, hotels, transport, horticulture, medical, construction, retail*) it will limit employment opportunities within particular sectors and hinder cross-sector employment, creating barriers to job mobility and flexibility thereby increasing the rate of unemployment in the country.

Bank staff have diverse academic degrees and certifications providing the necessary skills required in the banking business and not professions. The proposal also requires certification of Board members for banks (Board Credit Committees) thus limit shareholders' ability to appoint directors with diverse skill sets to support banks businesses.

7. Professional Exclusion and High Costs:

The proposed Bills may lead to further exclusion of individuals from the profession due to certification fees, training costs, and legal risks, such as customer claims against uncertified credit officers. Compliance costs will rise, with potential implications for job mobility and organizational strategy. The cost implications will be a burden to bankers in an already distressed economy and the financial burden of maintaining the new professional bodies will likely fall on banks, potentially through a percentage of loan sanctions, increasing the cost of borrowing.

8. Career and Innovation Barriers:

Professional bodies limit career growth and create narrow career pathways. By focusing on specific certifications and qualifications, the proposals risk stifling innovation and limiting the practical application of skills, especially in dynamic sectors like banking where bankers rely more on skillset to achieve business objectives vis a vis professional certification. There is a risk of over-standardization, which could suppress innovation in a sector that thrives on evolving skills and experience rather than rigid academic and professional qualifications

9. Discrimination of Banking Industry Credit Service Providers

Credit Service Providers work in other industries besides banking. It is not clear why the proposed Bill seeks to regulate credit professionals in the banking industry alone, yet credit services are offered across sectors, including telecommunications, hospitality, medicine, legal among other professionals.



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Best Practices

All developed and developing jurisdictions recognize banking as a business as opposed to a profession, and do not have statutory professional bodies to regulate professionals working in banks.

The conduct of banking business is subject to consumer protection laws, which provide clear penalties for offenders.

In the United States, United Kingdom, Australia, Singapore and India, the focus is on organizational responsibility and professional accountability, and not sector professional bodies as proposed. This prevents unnecessary duplication of professional and regulatory mandates, allowing banks to adapt to the evolving needs of the financial industry.

These proposed Bills would have significant negative consequences for the banking sector, stifling innovation, increasing costs, and limiting both career progression and cross-sector employment.

The Bills fail to in demonstrating the existing gaps in the banking sector that will be addressed. The Bills are redundant, introduce duplicate in existing regulations and self-serving. The Kenya Bankers Association therefore rejects the two Bills in their entirety to realize economic empowerment, create employment opportunities and wealth for individuals, households, businesses and the country.

We reiterate the question: What gap(s) or problem(s) are the two bills addressing that are not addressed by current laws and regulations. As an industry, an economy and country we find none and have not been persuaded by the petitioners in their draft Bills and rationale.

Dated this 10th Day of September 2024

A handwritten signature in blue ink, appearing to read 'Raimond Molenje'.

Raimond Molenje
Ag. CHIEF EXECUTIVE OFFICER
KENYA BANKERS ASSOCIATION



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Below is sample list of professions and skills in banking business

1. Executive Office	2. Investment and Trading	3. Asset Finance	4. Business Banking
5. Compliance	6. Corporate Banking	7. Credit	8. Customer Experience
9. Digital	10. Financial controllers	11. Human Resources	12. ICT
13. Audit	14. Legal	15. Operations	16. Retail Banking
17. Risk	18. Treasurers	19. Marketing	20. Data Protection
21. Bancassurance	22. Card Operations	23. Information Systems	24. Controls
25. Transactional Banking	26. Procurement	27. Facilities	28. Sales
29. Forensics	30. Cyber Security	31. Custody	32. Employee Relations
33. Forex	34. Branch Business	35. Data Science	36. AML
37. Research	38. Religious Banking	39. Medical	40. Drivers
41. Teller	42. Delivery	43. Hospitality	

Governor

BANKI
KUU YA
KENYA



CENTRAL
BANK OF
KENYA

Haile Selassie Avenue
P.O. Box 60000 - 00200 Nairobi, Kenya
Telephone: +254 20 286 1003

*DLPS
DOC
7/10/27*

October 4, 2024

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

Dear *Mr.*

*Head-PRF
to deal
amplified
info.*

**REQUEST FOR WRITTEN SUBMISSIONS ON A PUBLIC PETITION REGARDING
ENACTMENT OF THE BANKERS PROFESSIONAL BILL, 2023**

*2024/10/04
TNA
to
PRF*

Thank you for your letter of September 27, 2024, requesting the Central Bank of Kenya (CBK) to provide written submissions on a petition regarding the enactment of the proposed Bankers Professional Bill, 2023.

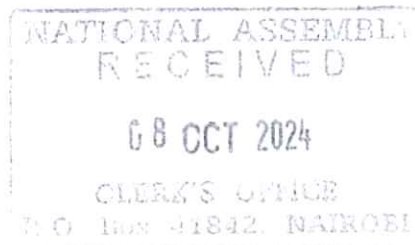
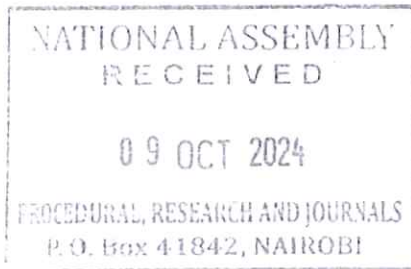
*Nat'l
PRF*

CBK had earlier reviewed the draft bill and shared its responses on March 8, 2024, April 19, 2024, and September 10, 2024. We have attached copies of our responses (Annexes I-III) for ease of your reference. CBK therefore reiterates its position as expressed in our earlier letters.

Sincerely,

[Signature]
Dr. Kamau Thugge, CBS

Attachments



BANKI
KUNYA
KENYA



CENTRAL
BANK OF
KENYA

BSD/GEN/42

September 10, 2024

Mr. Charles Osango
e-mail: karat

State Street Avenue
PO Box 100000 - 00200 Nairobi, Kenya
Telephone: 254200000 Fax: 25420192

Dear Sir,

**PROPOSAL FOR COLLABORATIVE INITIATIVES FOR THE INTERNATIONAL
DAY OF BANKERS CONFERENCE – DECEMBER 2024**

Thank you for your letter of August 19, 2024, seeking the Central Bank of Kenya's (CBK) support towards a proposed *International Day of Bankers Conference* in December 2024.

We have reviewed your proposal and note that it attempts to revive issues relating to the draft Bankers Professionals Bill, 2023, earlier reviewed by CBK. Please note that CBK already expressed its position in its responses of March 8, and April 19, 2024 (*copies attached*).

We therefore write to advise that CBK is unable to further consider your proposal.

Yours faithfully,

**MATU MUGO
DEPUTY DIRECTOR, BANK SUPERVISION**

Cc: Mr. Samuel Njoroge, EBS
The Clerk of the National Assembly
Parliament Buildings
Parliament Road
NAIROBI

April 19, 2024

Mr. Charles Osango
e-mail: karateng2000@yahoo.com

Dear Sir,

DRAFT BANKERS PROFESSIONALS BILL, 2023: PROPOSED PUBLIC PARTICIPATION STAKEHOLDER CONFERENCE

Thank you for your letter of March 18, 2024, proposing a public participation conference on the draft Bankers Professionals Bill, 2023.

The Central Bank of Kenya (CBK) earlier reviewed the draft Bill and shared its response on March 8, 2024 (Annex I). We note your current proposal essentially articulates the same issues raised in your earlier submissions, which were considered and determined.

In view of the foregoing, we reiterate our position as expressed in the letter of March 8, 2024, and urge that you pursue the proposed changes through existing structures. CBK is therefore unable to support the proposed public participation exercise.

Yours faithfully,


GERALD NYAOMA
DIRECTOR, BANK SUPERVISION

Cc: Mr. Samuel Njoroge, EBS
The Clerk of the National Assembly
Parliament Buildings
Parliament Road
NAIROBI

March 8, 2024

Mr. Charles Osango
e-mail: karateng2000@yahoo.com

Ms. Susan Nasimiyu Masafu
e-mail: karateng2000@yahoo.com

Dear Sir/Madam,

DRAFT BANKERS PROFESSIONALS BILL, 2023

Thank you for your letter of November 27, 2023, forwarding the draft Bankers Professionals Bill, 2023, for CBK's review and comment.

First, the Central Bank of Kenya (CBK) appreciates your time and efforts in drafting the Bill, which seeks to enhance professionalism and consumer protection in the banking sector. Improving service standards in the financial sector is critical in building a vibrant and responsive sector.

Having reviewed the draft Bill, we note that there exists a comprehensive framework and institutional structures to address the issues raised in the draft Bill. The enactment of the draft Bill would only duplicate the efforts of existing institutions which are already mandated with the roles proposed in the draft Bill. Accordingly, we advise that the enhancements proposed in the draft Bill be pursued through engagement with existing institutions, rather than by enactment of the draft Bill.

Yours faithfully,



MATU MUGO
DEPUTY DIRECTOR, BANK SUPERVISION

Cc: Mr. Samuel Njoroge, EBS
The Clerk of the National Assembly
Parliament Buildings
Parliament Road
NAIROBI