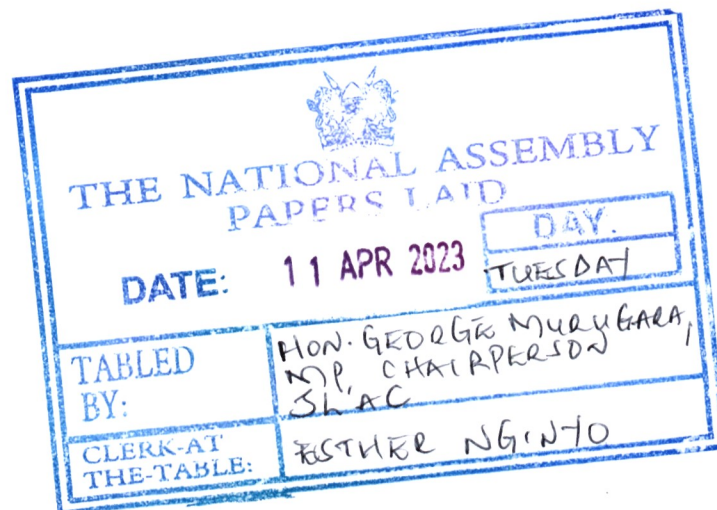




REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – SECOND SESSION

COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY

REPORT ON THE STATUTE LAW (MISCELLANANEOUS AMENDMENTS) BILL,
NATIONAL ASSEMBLY NO.60 OF 2022



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PART I

1.0 PREFACE

1.1 Introduction

This is the report of the Departmental Committee on Administration and Internal Security on the Statute Law (Miscellaneous Amendments) National Assembly Bill No. 60 of 2022. The Bill is an omnibus Bill sponsored by the Leader of Majority Party Hon. Kimani Ichung'wah (CBS) MP. The Bill was published on 22nd November 2022 and read first time on 9th December, 2022 and thereafter committed to Departmental Committees pursuant to Standing Order 127. The Bill seeks to amend various statutes in keeping with practice of making minor amendments to several laws which do not merit the publication of separate Bills.

The committee first met on 21st February, 2023 and on 21st March 2023 the Committee met the Ministry of Interior and National Administration, National Police Service, Betting Control Board and the National Police Service Commission.

The report contains the observations and the recommendations of the Committee as regards the consideration of the Statute Law (Miscellaneous Amendments) Bill No. 60 of 2022 which seeks to amend the following:

- i. The National Flag, Emblems and Names Act (Cap 99),
- ii. The Public Holidays Act Cap 10,
- iii. Counter Trafficking in Persons Act, 2010 (No.8 OF 2010)
- iv. Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)
- v. The National Police Service Commission Act, 2011(No.30 2011)
- vi. The Prevention of Fraud (Investments) Act, 1977).

1.2 Mandate of the Committee

The Departmental Committee on Administration and Internal Security of the National Assembly is established under Standing Order 216 whose functions pursuant to the Standing Order 216 (5) are as follows: -

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

1.3 Subjects of the Committee

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider the following subjects: -

- (i) Home affairs, internal security – including police services and coast guard services,
- (ii) Public administration,
- (iii) Immigration and citizenship.

In terms of budget oversight, the Committee oversees the following Offices, Ministry and Agencies:

- (i) Executive Office of the President,
- (ii) Office of the Deputy President,
- (iii) Office of the Prime Cabinet Secretary,
- (iv) Ministry of Interior and Administration comprising of the State Department for Internal Security and Administration and State Department for Immigration and Citizen Services,

- (v) National Police Service,
- (vi) National Police Service Commission, and
- (vii) Independent Policing Oversight Authority.
- (viii) The Semi-Autonomous Government Institutions under the Committee include Crime Research, Government Chemist, NGO Regulatory Services, Private Security Regulatory Service Board, Kenya Coast Guard, National Campaign against Drug and Substance Abuse.

1.4 Committee Membership

The Departmental Committee on Administration and Internal Security was constituted by the House on Thursday 28th October, 2022 and comprises of the following Members:

Hon. Gabriel Tongoyo, MP – **Chairperson**
MP Narok West Constituency

Hon. Col (Rtd) Dido Rasso, MBS, MP - **Vice Chairperson**
MP for Saku Constituency

Hon. Kaluma George Peter, MP
MP for Homa Bay Town Constituency

Hon. Protus Ewesit Akujah, MP
MP for Loima Constituency

Hon. Aduma Owuor, MP
MP for Nyakach Constituency

Hon. Rozaah Akinyi Buyu, MP
MP for Kisumu West Constituency

Hon. Fred C. Kapondi, MP
MP for Mt. Elgon Constituency

Hon. Caroline Ng'elechei, MP
MP Elgeyo-Marakwet County

Hon. Liza Chepkorir Chelule, M
MP for Nakuru County

Hon. Fatuma Jehow, MP
MP for Wajir County

Hon. Sarah Paulata Korere, MP
MP for Laikipia North Constituency

Hon. Francis Sigei, EBS, MP
MP for Sotik Constituency

Hon. Oku Kaunya, MP
MP for Teso North Constituency

Hon. Hussein Weytan Mohammed, MP
MP for Mandera East Constituency

Hon. Mburu Kahangara
MP for Lari Constituency

1.5 Committee Secretariat

The Committee Secretariat consist of the following:

Mr. Philip Lekarkar
Clerk Assistant II

Mr. Gideon Kipkosgei
Clerk Assistant III

Mr. Edison Odhiambo
Fiscal Analyst I

Mr. Benard Njeru
Clerk Assistant III

Ms. Delvin Onyancha
Research Officer III

Ms. Judith Kanyoko
Legal Counsel II

Dr. Maina Mburu
Research Officer III

Catherine Mukunyi
Sergeant At Arms

Rogers Kilungya
Audio Officer

1.6 Acknowledgement

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee is also thankful to Members of the Committee and the Secretariat for their dedication and useful expertise and insights during the deliberations of the Statute Law.

On behalf of the Departmental Committee on Administration and Internal Affairs, it is my pleasant privilege and honor to present the report on the Statute Law (Miscellaneous Amendments) Bill No 60 of 2022, with the intention to amend, The National Flag, Emblems and Names Act (Cap 99), the Public Holidays Act Cap 10, the Counter Trafficking in Persons Act, 2010 (No.8 OF 2010) Prevention of Organized Crimes Act, 2010 (No. 6 of 2010) The National Police Service Commission Act, 2011(No.30 2011) the Prevention of Fraud (Investments) Act, 1977).

**HON. GABRIEL TONGOYO, MP - CHAIRPERSON, DEPARTMENTAL COMMITTEE
ON ADMINISTRATION AND INTERNAL AFFAIRS**

PART II

A. CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022)

SUMMARY OF THE BILL

1. The Statute Law (Miscellaneous Amendments) Bill is an omnibus Bill sponsored by the Leader of the Majority Party Hon. Kimani Ichung'wa (CBS), MP. The Bill was published on 22nd November 2022 and was read a first time on 9th December, 2022 and thereafter committed to various Departmental Committees pursuant to Standing Order 127. The Bill seeks to amend various statutes in keeping with the practice of making minor amendments to several laws which do not merit the publication of separate Bills.
2. In relation to the Acts relevant to this Committee, the Bill intends to amend the following Acts of Parliament:
 - i. The National Flag, Emblems and Names Act (Cap 99),
 - ii. The Public Holidays Act Cap 10,
 - iii. The Counter Trafficking in Persons Act, 2010 (No.8 of 2010)
 - iv. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)
 - v. The National Police Service Commission Act, 2011(No.30 2011)
 - vi. The Prevention of Fraud (Investments) Act, 1977).

PART III

3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

3. Article 118(1) (b) of the Constitution and Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In compliance with the foregoing, the Committee, through the placement of adverts in the print media on 16th December, 2022 (invited the public and interested stakeholders to submit memoranda on the proposed amendment. Three submissions were received from the Ministry of Energy & Petroleum, the Office of the Director of Public Prosecutions (ODPP) and from the Kenya Law Reform Commission.
4. Through the placement of adverts in the print media on 16th December, 2022, invited the public and interested stakeholders to submit memoranda on the proposed amendment. Further, vide a letter Ref: NA/DDC/AIA/2032/021 dated 15th March, 2023 and letter Ref: NA/DDC/AIA/2032/022 dated 15th March, 2023, the Committee invited the following key stakeholders to provide written submissions on the proposed amendments to the said Act: The Cabinet Secretary for Interior and National Administration together with the Chairman of the National Police Service Commission and the National Police Service.
5. Further, vide a letter NA/DDC/AIA/2023/019 Dated 14th March 2023, the Committee invited the following key stakeholders to provide written submissions on the proposed amendment to the said Acts of Parliament The National Police Service submitted a written memorandum while the Ministry of Interior and National Administration, and the National Police Service Commission appeared before the committee on 21st March 2023 and made their submissions.
6. The analysis of the submissions made by the ODPP, the Ministry of Interior and National Administration, the National Police Service and the National Police Service Commission are contained in Part IV of this Chapter.

PART IV

3.1 ANALYSIS OF THE PROPOSED AMENDMENTS

7. The Bill proposes amendments to six Acts of Parliament. The following is an analysis of the proposed amendments and the submissions made by the ODPP, the Ministry of Interior and National Administration, the National Police Service and the National Police Service Commission for each of the proposed amendments:

A. The National Flag, Emblems and Names Act (Cap 99).

The Bill proposes to amend Section 6 of the Act to replace reference to the Attorney-General with the Director of Public Prosecutions.

Submissions by Stakeholders

The Committee received comments from the ODPP who submitted that the proposal would bring provisions of the Act into conformity with Article 157 of the Constitution. The Committee also received comments from the National Police Service and the Ministry of Interior and National Administration who raised no objection to the amendment.

Observations by the Committee:

The functions of the Office of the Director of Public Prosecutions established under Article 157 include the institution and undertaking of criminal proceedings, taking over, continuation and discontinuation of criminal proceedings. The Act may therefore be amended as proposed to harmonize it with the provisions of the Constitution.

Recommendation

THAT the proposed amendment to Section 6 of the National Flag, Emblems and Names Act (Cap 99) be proceeded with as proposed.

B. The Public Holidays Act Cap 10

The Bill proposes to amend the Schedule to the Public Holidays Act to rename the holiday celebrated on the 10th of October from Utamaduni Day to Huduma Day.

Comments by Stakeholders

The Committee received comments from the ODPP who submitted that the proposal was acceptable and the National Police Service who raised no objection to the amendment. In her oral submissions, Ms. Wanjiku Mbiyu from the Office of the Attorney General noted that the Act had initially been amended in 2020 to rename the holiday from “Moi Day” to its current Utamaduni Day. She also attributed it to the setting up of the Huduma Centres and the need for the Day to celebrate service to others.

Observations by the Committee

The Principal Act is enacted pursuant to Article 9 (5) of the Constitution which provides that Parliament may enact legislation prescribing other public holidays and providing for observance of public holidays. The Act may therefore be amended as proposed to reflect what is intended to be observed on the said holiday.

Recommendation

THAT the proposed amendment to the Public Holidays Act (Cap 10) be proceeded with as proposed.

C. Counter Trafficking in Persons Act, 2010 (No.8 of 2010)

The Bill proposes to amend Section 19 (2) (e) of the Principal Act and replace the Attorney-General with the Director of Public Prosecutions.

Comments by stakeholders

The Committee received comments from the Director of Public Prosecutions who submitted that the proposal would bring the provision of the Act into conformity with Article 157 of the Constitution. The Committee also received comments from the National Police Service, the Ministry of Interior and National Administration and the National Police Service Commission who raised no objection to the amendment. The National Police Service Commission in their oral submissions further proposed an amendment to Section 19(2)(f) of the Act to substitute the Commissioner of Police with the Inspector General of Police.

Observations by the Committee:

Section 19 of the Act provides for the composition of the Counter Trafficking in Persons Advisory Committee whose function under Section 20(1) is to advise the Minister on inter-agency activities aimed at combating trafficking and the implementation of preventive, protective and rehabilitative programmes for trafficked persons.

Given that the Attorney General is the chief legal advisor of the government, while the Director of Public Prosecutions is responsible for prosecution of offences under the Act, it would be prudent to have both offices as part of their membership of the Advisory Committee.

The Committee is therefore of the view that there is a need to retain the Attorney General and add the Director of Public Prosecutions as members of the Counter Trafficking in Persons Advisory Committee. This is because the Attorney General's role as the principal legal adviser to the government fits into the function of the advisory committee under the Act, which is to advise the Minister on inter-agency activities aimed at combating trafficking and the implementation of preventive, protective and rehabilitative programmes for trafficked persons.

Recommendation

THAT the Schedule to the Bill be amended in the proposed amendment to the Counter-Trafficking in Persons Act, 2010 (No.8 of 2010) by deleting the proposed amendment to section 19(2)(e) and substituting therefor the following new proposed amendment—

Section 19 of the Principal Act be amended in subsection (2) by inserting the following new paragraph immediately after paragraph(e)—

“(ea) the Director of Public Prosecutions;”

D. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)

The Bill proposes three amendments to this Act as follows—

The first amendment seeks to amend section 14 of the Principal Act to increase the penalty for offences related to obstruction of justice under the Act from Kshs. 500,000 to Kshs. 10,000,000.

Submissions by Stakeholders.

The Committee received written comments from the ODPP who submitted that this was a good proposal since it enhances the discretion of the Magistrate where the situation demands a stiffer penalty and the Director of Public Prosecutions pursuant to Article 157(9) and Section 22 of the ODPP Act 2013. The Committee also received comments from the National Police Service and the Ministry of Interior and National Administration, who raised no objection to the amendment. In their oral submissions, the Ministry of Interior and National Administration submitted that the purpose of the amendment was to provide a stiffer penalty for the offences and to thus be a deterrent.

Observations by the Committee:

The Committee noted that there was no substantive reason or empirical data provided for the effectiveness of enhancement of penalties. The committee further noted that this amendment would require further debate and it was necessary to have it as a substantive amendment to the Principal Act instead of a miscellaneous amendment through an omnibus Bill.

Further, the Committee observed that the proposed amendment seeks to remove the proposed enhancement of the penalty for obstruction of justice under the Act from five hundred thousand shillings to ten million shillings. This is because no substantive reason or empirical data was provided for the effectiveness of enhancement of penalties. Further, the amendment would require further debate and it is necessary to have it as a substantive amendment to the Principal Act, instead of a miscellaneous amendment through an omnibus Bill.

The second amendment proposes to increase the duration of an order issued by the High Court for tracing of Property suspected to belong to organized crime organizations from thirty days to ninety days which is provided for under Section 15(3) of the Act.

Comments by stakeholders

The Committee received comments from the National Police Service and the Ministry of Interior and National Administration who raised no objection to the amendment. During their oral

submissions, the Ministry of Interior and National Administration submitted that the tracing of property required a lot of time, for which 30 days was not sufficient.

Observations by the Committee

The Committee observed that although the section had been indicated as 14(3) this section does not exist in the Principal Act. From the memorandum of objects and reasons, it is evident that the intention of the drafter was to amend section 15(3) which provides for the time within which an order for tracing of property should lapse. The Committee further observed that right to property is protected under Article 40 of the Constitution and is only limited where the property has been found to have been unlawfully acquired. Given that section 15 of the Act is for purposes of the investigation of an offence there is a possibility of abuse of the extension of time. The Act already provides an avenue for the extension of time by the High Court, where the investigative agency has sufficient reason to require more time. This balances the interest of the investigative agency and the person against whom an order has been made.

The third amendment proposes to amend Section 17(9) of the principal Act to substitute the Commissioner of Police with the Inspector-General of the National Police.

Comments by stakeholders

The Committee received comments from the National Police Service and the Ministry of Interior and National Administration who raised no objection to the amendment.

Observations by the Committee

The purpose of the amendment is to substitute the now defunct office of the Commissioner of Police with the Inspector-General of the National Police established under the Constitution. The Act may be amended as proposed to harmonize it with the provisions of the Constitution.

Recommendation

In View of the above observation, the Committee recommends:

- 1. THAT the Schedule to the Bill be amended in the proposed amendment to the Prevention of Organised Crimes Act, 2010 (No. 6 of 2010) by deleting the proposed amendment to section 14;**

2. **THAT the Schedule to the Bill be amended in the proposed amendment to the Prevention of Organised Crimes Act, 2010 (No. 6 of 2010) by deleting the proposed amendment to section 14(3); and**
3. **THAT the proposed amendment to Section 17(9) of the Prevention of Organized Crimes Act, 2010 (No. 6 of 2010) be proceeded with as proposed.**

E. The National Police Service Commission Act, 2011 (No. 30 of 2011)

The Bill proposes to amend Section 26(2) of the Principal Act to increase the time within which the National Police Service Commission is required to submit its annual report from three months to six months.

Comments by Stakeholders

The Committee received comments from the ODPP, who submitted that proposal was acceptable. In their oral submissions, the Ministry of Interior and National Administration raised no objection to the proposed amendment while the National Police Service Commission submitted that the already stipulated three months were sufficient for submission of their annual reports. It was also noted that Article 254 (1) of the Constitution required each commission, and each holder of an independent office to submit a report to the President and to Parliament as soon as practicable after the end of each financial year. It was thus submitted that a period of six months would be contrary to this provision.

Observations by the Committee: The Committee noted that no basis had been laid for increasing the time for submission of annual report from three months to six months. Comparably, the Committee noted that other commissions including the Ethics and Anti-Corruption Commission and the Independent Electoral and Boundaries Commission all submitted their annual reports within a period of three months.

Further the Committee observes that, the proposed amendment seeks to remove the proposed extension of time for submission of annual reports by the National Police Service Commission from three months to six months. Article 254 (1) of the Constitution requires each commission,

and each holder of an independent office to submit a report to the President and to Parliament as soon as practicable after the end of each financial year. A period of six months is unreasonably long and thus contrary to Article 254(1) of the Constitution. No basis was laid for the extension of time. Further, from the stakeholder engagements, the National Police Service Commission indicated that the time already provided was sufficient.

Recommendation

THAT the Schedule to the Bill be amended in the proposed amendment to the National Police Service Commission Act, 2011 (No. 30 of 2011) by deleting the proposed amendment to section 26(2).

F. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)

The Bill proposes to amend Section 27(3) of the Principal Act to replace reference to the Attorney-General with the Director of Public Prosecutions.

Comments by Stakeholders

The Committee received comments from the ODPP who submitted that the proposal would bring provisions of the Act into conformity with Article 157 of the Constitution. The Committee also received comments from the National Police Service and the Ministry of Interior and National Administration who raised no objection to the amendment.

Observations by the Committee:

The functions of the Office of the Director of Public Prosecutions established under Article 157 include the institution and undertaking of criminal proceedings, taking over, continuation and discontinuation of criminal proceedings. The Act may therefore be amended as proposed to harmonize it with the provisions of the Constitution.

Recommendation

THAT the proposed amendment to Section 27(3) the Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977) be proceeded with as proposed.

SIGNED



DATE

22/03/2023

HON. GABRIEL TONGOYO, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
INTERNAL SECURITY

ANNEXURES

Annex 1: Minutes of the Committee sittings

Annex 2: Adoption List

MINUTES OF THE 25TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY HELD ON TUESDAY 21ST MARCH, 2023 IN PALM COURT, PANARI HOTEL AT 2.00 AM.

PRESENT

1. **Hon. Gabriel Koshal Tongoyo, MP - Chairperson**
2. **Hon. Col (Rtd) Dido Rasso, MBS, MP - Vice Chairperson**
3. Hon. Kaluma George Peter, MP
4. Hon. Fred C. Kapondi, MP
5. Hon. Sarah Paulata Korere, MP
6. Hon. Mburu Kahangara, MP
7. Hon. Aduma Owuor, MP
8. Hon. Protus Ewesit Akujah, MP

APOLOGIES

1. Hon. Liza Chepkorir Chelule, MP
2. Hon. Oku Kaunya, MP
3. Hon. Francis Kipyegon Sigei, EBS, MP
4. Hon. Fatuma Abdi Jehow, MP
5. Hon. Caroline Jeptoo Ng'elechei, MP
6. Hon. Hussein Weytan Mohammed, MP
7. Hon. Rozaah Akinyi Buyu, MP

COMMITTEE SECRETARIAT

1. Mr. Gideon Kipkogei - Clerk Assistant III
2. Mr. Bernard Nthiga - Clerk Assistant III
3. Ms. Judith Kanyoko - Legal Counsel
4. Mr. James Macharia - Media Relation Officer
5. Mr. Rodgers Kilungya - Audio Officer
6. Ms. Delvin Onyancha - Research Officer
7. Ms. Catherine Mukunyi - Sergeant at-Arms

MIN. NO. DC-AIA/121/2023: PRELIMINARIES.

The meeting was called to order at 2:10 Pm followed by a word of prayer.

MIN. NO. DC-AIA/122/2023: ADOPTION OF THE AGENDA.

The agenda was adopted having been proposed by Hon. Mburu Kahangara, MP and seconded by Hon. Sarah Paulata Korere, MP.

MIN. NO. DC-AIA/123/2023: CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORT ON CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL NO. 60 OF 2022.

The Committee having considered the submissions from the Agencies on the Statute Law (Miscellaneous Amendments) Bill No.60 of 2022, made the following recommendations:

COMMITTEE RECOMMENDATIONS.

Pursuant to Standing Order 127, the Committee recommends:

- (1) **THAT** the proposed amendments to Section 6 of the National Flag, Emblems and Names Act (Cap 99) be proceeded with as proposed.
- (2) **THAT** the proposed amendment to the Public Holidays Act Cap 10 be proceeded with as proposed.
- (3) **THAT** the Bill be amended in the proposed amendment to the Counter-Trafficking in Persons Act 2010 (No.8 of 2010) —

By deleting the proposed amendment to section 19(2) (e) and substituting therefor the following new proposed amendment—

Section 19 of the Principal Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (e) —

“(ea) the Director of Public Prosecutions;”

- (4) **THAT** the Bill be amended by deleting the proposed amendment to Section 14 of the Prevention of Organized Crimes Act, 2010 (No. 6 of 2010).
- (5) **THAT** the Bill be amended by deleting the proposed amendment to Section (3) of the Prevention of Organized Crimes Act, 2010 (No. 6 of 2010). However, if the House accepts the amendment, the correct section should be indicated as Section **15(3)**.
- (6) **THAT** the proposed amendment to Section 17(9) of the Prevention of Organized Crimes Act, 2010 (No. 6 of 2010) be proceeded with as proposed.
- (7) **THAT** the Bill be amended by deleting the proposed amendment to Section 26(2) of the National Police Service Commission Act, 2011 (No. 30 of 2011).
- (8) **THAT** the proposed amendment to Section 27(3) the Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977) be proceeded with.

The Report was unanimously adopted having been proposed by Hon. Fred C. Kapondi, MP and seconded by Hon. Aduma Owuor, MP.

MIN. NO. DC-AIA/124/2023: ANY OTHER BUSINESS

No any other business arose.

MIN. NO. DC-AIA/125/2023: ADJOURNMENT

There being no other business, the meeting was adjourned at 4.00 pm. The next meeting will be held on Notice.

SIGNED  DATE 22/03/2023

**(HON. GABRIEL TONGOYO KOSHAL, MP - CHAIRPERSON)
DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL
SECURITY.**





THE NATIONAL ASSEMBLY
13TH PARLIAMENT – SECOND SESSION (2023)
COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY

REPORT ADOPTION LIST OF THE

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022 (NATIONAL ASSEMBLY BILL NO.60)

We, the undersigned Members of the Departmental Committee on Administration and Internal Security do hereby append our signatures to adopt this Report

Date: 21/03/2023

No.	MEMBER	SIGNATURE
1.	Hon. Gabriel Koshal Tongoyo, MP - Chairperson	
2.	Hon. Col (Rtd) Dido Rasso, MBS, MP - Vice Chairperson	
3.	Hon. Kaluma George Peter, MP	
4.	Hon. Fred C. Kapondi, MP	
5.	Hon. Aduma Owuor, MP	
6.	Hon. Sarah Paulata Korere, MP	
7.	Hon. Liza Chepkorir Chelule, MP	
8.	Hon. Mburu Kahangara, MP	
9.	Hon. Protus Ewesit Akujah, MP	
10.	Hon. Oku Kaunya, MP	
11.	Hon. Rozaah Akinyi Buyu, MP	
12.	Hon. Francis Kipyegon Sigei, EBS, MP	
13.	Hon. Fatuma Abdi Jehow, MP	
14.	Hon. Caroline Jeptoo Ng'elechei, MP	
15.	Hon. Hussein Weytan Mohammed, MP	





National Police Service Commission



THE NATIONAL POLICE SERVICE COMMISSION'S SUBMISSIONS

TO

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL AFFAIRS

PRESENTED BY

ELIUD KINUTHIA, CBS, OGW HSC

CHAIRPERSON, NATIONAL POLICE SERVICE COMMISSION

TUESDAY, 21ST MARCH, 2023



OUTLINE

1. Amendments to NPSC Act, 2011

1.1 Submission of Annual Reports to the President and the National Assembly

1.2 Quorum and Conduct of National Police Service Commission Business

1.2.1 Proposed Amendments (Second Schedule of NPSC Act, 2011)

2.0 Comments on other Proposed Amendments in the Bill

2.1 ACECA, 2003

Investigations on State Officers be time- bound

2.2 The Leadership and Integrity Act, 2012

i. Submitting shortlists to EACC

ii. Mass recruitments by NPSC

iii. Duplicity of NPSC function (Employment vetting)

2.3 Section 18 of Act No. 2 of 2010

Complaints on Vetting of Judges and Magistrates

2.4 Section 19 of Act No. 8 of 2010

Committee of Counter-Trafficking of Persons

1.0 AMENDMENTS TO NPSC ACT, 2011

The National Assembly Departmental Committee on the Administration of Justice and Internal Affairs has invited the Chairperson and the Secretary, National Police Service Commission to discuss on the Statute Law (Miscellaneous Amendments) Bill No. 60 of 2022 pursuant to Article 118 of the Constitution of Kenya, 2010.

The invitation requests the National Police Service Commission to make its submissions on the proposed amendments to the National Police Service Commission Act, 2011 in the public participation forum with stakeholders on Tuesday 21st March, 2023 via a letter Ref: NA/DDC/ALA/2023/022 dated 15th March, 2023.

The National Police Service Commission consequently makes the following submissions:

1.1 SUBMISSION OF ANNUAL REPORTS

In the Matter of submissions of the Annual reports to President and the National Assembly, the NPSC concurs with the six month period and proposes that the section should read as follows for avoidance of doubt:

“S. 26(2) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates”.

1.2 SECOND SCHEDULE- NATIONAL POLICE SERVICE COMMISSION ACT, 2011

The Commission further proposes an amendment on the Second Schedule of the NPSC Act at paragraph “(3) Quorum”.

The Commission opines that all members of the Commission as set out in Article 246(2) of the Constitution of Kenya, 2010 are equal in the discharge of this Constitutional role.

The Second Schedule currently reads as follows:

(3) Quorum

The quorum of meetings of the Commission shall be six members, who shall include-

- a. the four members appointed under Article 246 (2) (a) (i) and (iii) of the Constitution; and
- b. any two of the members appointed under Article 246 (2) (b) and (c) of the Constitution.

1.2.1 PROPOSED AMENDMENTS

The Commission **proposes** the following amendment to Second Schedule at paragraph (3) to read:

(3) The quorum for the conduct of business at a meeting of the Commission shall be at least five members.

NPSC also proposes the **insertion of new paragraph (6):**

(6) Subject to Paragraph (3), No proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

These proposed amendments will resolve the inefficiencies caused by the position- specific quorum requirements that have plagued the Commission and continues to limit its Constitutional mandate and functions.

2.0 COMMENTS ON OTHER PROPOSED AMENDMENTS IN THE BILL

2.1 ACECA, 2003 (AT PG. 1465, DRAFT BILL)

The proposed amendment to The Anti-corruption and Economic Crimes Act, 2003 (No. 3 of 2003) proposes for a new section (6A) that "...where a State Officer is under investigation for..."

- i. The Commission proposes that where there are investigations, the State Officer is barred from office for the specified time period of investigations:
- ii. There should be a specified time period within which the investigations should be carried out (i.e. 90 days and the State Officer is charged or removed from office if there is evidence). This will limit the use of pending investigations as an avenue for negating the security of tenure of State Officers.

2.2 THE LEADERSHIP AND INTEGRITY ACT, 2012 (PG. 1474)

The Bill proposes amendment of this Act at S. 12 by introducing subsections (2), (3), (4) and (5) public entities recruiting staff to submit the List of shortlisted candidates within seven days to the Ethics and Anti-corruption Commission for integrity and suitability verification.

The Commission (NPSC) notes that:

- i. The EACC is specific that it requires the shortlists within 7 days yet there is no corresponding time period for which it is required to give its recommendations to the recruiting public entity. The Corresponding period should be also within 7 days.
- ii. NPSC is a Human Resource Service Commission that conducts mass recruitments to over 1000 candidates especially at the entry levels and this lack of corresponding timeline will unduly feter the decision of the Commission in its recruitment mandate under Article 246(3) of the constitution.
- iii. There are offices in the NPS that have strict timelines for recruitment such as within 14 days (in the recruitment of a Deputy Inspector General). The Bill should therefore be cognizant of this unique recruitment requirements

by the Law and allow NPSC to receive such recommendations within 3 days in default of which the NPSC is deemed to be in compliance with the Law.

- iv. The NPSC is already mandated to conduct Vetting of members of the National Police Service and further does employment vetting and this amendment if applied to members of the NPS is a duplication of the NPSC mandate.

2.3 SECTION 18 OF NO. 2 OF 2010 (PG. 1534)

The NPSC proposes that its name as stated in the Bill at 18(1)(c)(ix) be substituted with the **National Police Service (NPS)**.

The NPS has the operational capacity to conduct investigations, do background checks and related functions on persons for any Government entity while the NPSC may only give information relating to persons within the scope of their employment.

2.4 SECTION 19 OF NO. 8 OF 2010 (PG 1534)

The Commission (NPSC) notes that in the proposed members of the Advisory Committee on Counter Trafficking in persons, the member set out in S. 19(2) (f) is named as Commissioner of Police.

The proposal by NPSC is that the said S. 19(2) (f) the proposed title be substituted by the **“Director of Criminal Investigations”**.



National Police Service Commission
P.O. Box 47363 - 00100, Nairobi
Telephone: 0709 099 000
Email: info@npsc.go.ke
www.npsc.go.ke

Admin

KENYA LAW REFORM COMMISSION



"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/RES/93 VOL.VI (38)
and Date

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

(Attn: Mr. Jeremiah W. Ndombi, MBS)

Dear

Jerem

RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO.60 OF 2022)

We acknowledge with thanks receipt of your letter Ref.No.NA/DDC/JLAC/2022/010 dated 20th December, 2022 on the above subject.

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

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

Yours

Sincerely,
Joash Dache

Joash Dache, MBS
Secretary/Chief Executive Officer

Encl.

NATIONAL ASSEMBLY
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KENYA LAW REFORM COMMISSION
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P.O. Box 34999-00100
NAIROBI, KENYA

12th January, 2023





THE KLRC COMMENTS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

I. INTRODUCTION

This memorandum is issued in furtherance of the Kenya Law Reform Commission's mandate under section 6 of the Kenya Law Reform Commission Act, No, 19 of 2013, to keep under review all the law and recommend its reform to ensure, among others, that the law systematically develops in compliance with the values and principles enshrined in the Constitution and that the law is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

The Kenya Law Reform Commission (KLRC) is in receipt of a letter from the National Assembly dated 20 December 2022 (ref: NA/DDC/JLAC/2022/010) seeking its comments on the Statute Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bill, No. 60 of 2022. The Bill seeks to "amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of several separate Bills". The National Assembly has sought KLRC's comments on the Bills under the purview of the Departmental Committee on Justice and Legal Affairs.

Against this background and pursuant to the KLRC's mandate, KLRC has undertaken an analysis of the relevant Bills as set out below.

II. ANALYSIS

	LAW	S.	PROPOSED AMENDMENT	KLRC COMMENT	JUSTIFICATION
1.	The Judicature Act (Cap.8)	7(1)	Delete the word "thirty" and substitute therefor the word "seventy".	No objection to the proposed amendment.	Increasing the number of judges at the Court of Appeal will facilitate speedy delivery of justice.
2.	The Appellate Jurisdiction Act (Cap. 9)	59(7)	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".	This section does not exist in the Act and is instead found in the Court of Appeal Rules. KLRC has no objection to the amendment of the Court of Appeal Rules in the requisite	The proposed amendment would align the Rules to Article 157(6) of the Constitution which provides that the Director of Public Prosecutions is the one to exercise State powers of prosecution.

				manner and not through the amendment of the Appellate Jurisdiction Act.	
	The Appellate Jurisdiction Act (Cap. 9)	73	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".	This section does not exist in the Act and is instead found in the Court of Appeal Rules. KLRC has no objection to the amendment of the Rules in the requisite manner and not through the amendment of the Appellate Jurisdiction Act.	The proposed amendment would align the Rules to Article 157 of the Constitution.
3.	The Vexatious Proceedings Act (Cap. 41)	4	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157(6) of the Constitution.
4.	The Penal Code (Cap. 63)	146	Delete the words "idiots or imbeciles" wherever they appear and substitute therefor the words "persons with mental disabilities".	No objection to the proposed amendment.	The proposed amendment aligns the Code with the constitutional provisions on persons with disabilities, the Persons with Disabilities Act (No. 14 of 2003) and the conventions that Kenya has ratified on persons with disabilities.
5.	The Criminal Procedure Code (Cap.75)	2	Delete the expression "State Counsel" appearing in the definition of the term "public prosecutor" and substitute therefor the expression "Prosecution Counsel".	No objection to the proposed amendment.	The proposed amendment would align the Code to the Office of the Director of Public Prosecutions Act, 2013.

		<p>Delete the definition of "police officer" and substitute therefor the following new definition—</p> <p>"police officer" has the meaning assigned to it under the National Police Service Act, 2012.</p>	No objection to the proposed amendment.	The proposed amendment would align the Code to the National Police Service Act, 2012.
		<p>Delete the definition of "police station" and substitute therefor the following new definition—</p> <p>"police station" has the meaning assigned to it under the National Police Service Act, 2012.</p>	No objection to the proposed amendment.	The proposed amendment would align the Code to the National Police Service Act, 2012.
	83	<p>Delete and substitute therefore the following new section—</p> <p>83.(1) The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by sections 81 and 82, and by Part VIII, be vested for the time being in the Secretary of Prosecution Services, the Deputy Director of Public Prosecutor, the Senior Assistant Director of Public Prosecutions, the Senior Principal Prosecution Counsel, Senior Prosecution Counsel and Prosecution Counsel, and the exercise of those powers by the specified officers shall then operate as if they had been exercised by the Director of Public Prosecutions.</p>	No objection to the proposed amendment.	The proposed amendment would align the Act to the Office of the Director of Public Prosecutions Act, 2013.

			(2) The Director of Public Prosecutions may in writing revoke an order made by him under this section.		
		90(3)	Delete the words "a Sunday" and substitute therefor the words "any day of the week including Sunday".	No objection to the proposed amendment.	The proposed amendment clarifies the provision.
		123(1)	Delete the words "other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence".	No objection to the proposed amendment.	The proposed amendment aligns the Code to Article 49 (h) of the Constitution which provides that offences are bailable.
		131(2)	Delete the word "movable".	No objection to the proposed amendment.	The proposed amendment widens the scope of property that may be attached. This may, in turn, act as a deterrent to a person bound by a recognizance.
		137	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
6.	The Extradition (Commonwealth) Countries Act (Cap. 77)	7	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
		8	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
		9	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.

		10	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
7.	Official Secrets Act (Cap. 187)	10(1). 49(1)	Deleting the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
8.	The Evidence Act (Cap. 80)	3	Insert the following definition in proper alphabetical sequence— "photograph" means an image created by light falling on a light sensitive surface, either photographic film or an electronic medium and made visible and permanent by chemical treatment or stored digitally,	No objection to the proposed amendment.	The proposed amendment takes into account technological advances in photography.
		78(1)	Insert the words "or an electronic and digital medium" immediately after the word "film".	No objection to the proposed amendment.	The proposed amendment takes into account technological advances in photography.
		125 (2)	Insert the word "a mentally disordered person or a lunatic" and substitute therefor the words "a person with a mental disability".	No objection to the proposed amendment.	The proposed amendment aligns the Act with constitutional provisions on persons with disabilities, the Persons with Disabilities Act (No.14 of 2003) and the conventions that Kenya has ratified on persons with disabilities.
9.	The Vetting of Judges and Magistrates Act (No. 2 of 2011)		Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment save that the citation of the Act is wrong. It should read No. 2 of 2011 and not 2010).	The proposed amendment would align the Act to Article 157 of the Constitution.

10.	The Judicial Service Act (No. 1 of 2011)	38	<p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The Commission shall submit the annual report to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>No objection to the spirit of the proposed amendment to provide a reasonable time frame for the submission of the annual report. However, the proposed amendment should read "Parliament" instead of "National Assembly" in accordance with Article 254(1) of the Constitution.</p>	<p>The proposed amendment contravenes Article 254(1) of the Constitution which requires constitutional commissions and independent offices to submit a report to the President and to Parliament. In addition, the proposed amendment contravenes section 38(4) of the Judicial Service Act which requires the report to be tabled before the two Houses of Parliament.</p>
				<p>Consider standardizing the provision for all constitutional commissions and independent offices.</p>	<p>This ensures consistency in legislation.</p>
11.	Independent Electoral and Boundaries Commission Act (No. 9 of 2011)	24(1)	<p>Delete the word "three" and substitute therefor the word "six".</p>	<p>No objection to the proposed amendment.</p>	<p>Three months is too short a period to file the annual report in view of the magnitude of work involved.</p>
12.	The Kenya National Commission on Human Rights Act, (No. 14 of 2011)	53	<p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>No objection to the spirit of the proposed amendment to provide a reasonable time frame for the submission of the annual report. However, the proposed amendment should read "Parliament" instead of "National Assembly" in accordance with Article 254(1) of the Constitution.</p>	<p>The proposed amendment contravenes Article 254(1) which requires constitutional commissions and independent offices to submit a report to the President and to Parliament.</p>


				Consider standardizing the provision for all constitutional commissions and independent offices.	This ensures uniformity in legislation.
13.	Ethics and Anti-Corruption Commission Act (No. 22 of 2011)	27(2)	Delete the word "three" and substitute therefor the word "six".	No objection to the proposed amendment.	Three months is too short a period to file the annual report in view of the magnitude of work involved.
14.	Anti-Corruption and Economic Crimes Act (No. 3 of 2003)	25A.	Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendments.	The proposed amendment would align the Act to Article 157 of the Constitution.
		37(6)			
		62(5)			
		62(6)	<p>(6A) Notwithstanding the provisions of any other law, where a state officer is under investigation for, or has been charged with corruption or economic crime, the Commission may, by an <i>ex parte</i> application in the High Court, seek for an order barring the officer from accessing his or her office or exercising the powers of that office including participating in decision making, voting and supervising staff.</p> <p>(6B) The provisions of subsection (6A) shall apply where the Commission upon preliminary investigations has established grounds to reasonably suspect that the public or state officer is likely to—</p> <p>(a) conceal, alter, destroy, or remove</p>	No objection to the proposed amendment. However, consider including the expression "public officer" in subsection (6A) as has been proposed in subsection (6B).	This offence should apply to both State and public officers. In addition, the proposed amendment is in line with the Court of Appeal decision in the case of <i>Moses Kasaine Lenolkulal vs Republic</i> , Criminal Appeal No. 109 of 2019.

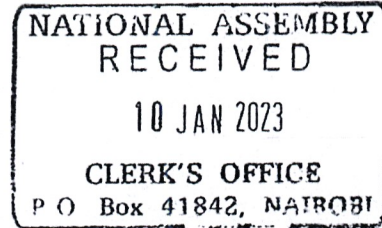
			<p>records, documents or other evidence;</p> <p>(b) intimidate, threaten or otherwise interfere with witnesses; or</p> <p>(c) interfere with investigations in any other manner.</p>		
15.	Sexual Offences Act (No. 3 of 2006)	40	Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
16.	International Crimes Act (No. 16 of 2008)		Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
17.	Leadership and Integrity Act, 2012 (No. 19 of 2012)	12A.	New subsections to mandate the EACC vet all the shortlisted candidates.	Considering the number of requests that the EACC may receive from the various public entities, it would be prudent for the Commission to be mandated to vet only those who are considered for appointment, that is, those who have undergone the interview process.	This would save the EACC time and money.
18.	The Kenya Law Reform Commission Act (No. 19 of 2013)			Although the National Assembly's letter dated 20 December 2022 (ref: NA/DDC/JLAC/2022/010) and the Memorandum to the Public indicates that the Statute Law (Miscellaneous Amendment) Bill, 2022, seeks to amend the Kenya Law Reform Commission	

				<p>Act to provide for clarifications on the attendance of the <i>ex officio</i> members at the Commission meeting, the Bill does not contain any proposed amendments.</p> <p>Further, the Kenya Law Reform Commission Act is erroneously cited as Act, No. 35 of 2013 instead of No. 19 of 2013.</p>	
19.	Bribery Act (No. 47 of 2016)	1.	Delete the expression "Bribery Act" and substitute "Anti-Bribery Act".	No objection to the proposed amendment.	The proposed amendment describes what the Act is about and avoids any misrepresentation.
		5.	Delete the word "who" and substitute therefore the word "if the person offering, promising or giving knows".	The word "who" appears in both subsection (1) and (2), hence there is need for clarity on where the phrase "if the person offering, promising or giving knows" is to be inserted.	This will clarify the provision.



Arale, Magub, Alimud Sultan,
Mugosma, Mutunga, R. Kai, Nahu,
Rose Kiinyoshi, Lameen Mwasiga,
Akadelli, Kina, Maluki, Gindicha

Please desk

11/1/23



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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

ODPP House,
Ragati Road, Upper Hill
P.O. BOX 30701 – 00100
NAIROBI

When replying please quote:

REF. ODPP/ES/GEN

9th January, 2023

The Clerk,
National Assembly,
Parliament Building,
P.O. Box 41842 – 00100,
NAIROBI

ATTN: Mr. Jeremiah W. Ndombi

**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL (NATIONAL
ASSEMBLY BILLS NO. 60 OF 2022)**

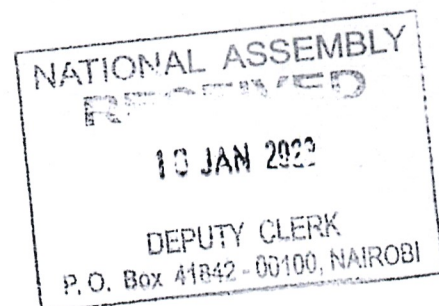
Reference is made to your letter Ref. NA/DDC/LABOUR/2022/005 and dated 21st December 2022 on the above subject calling for written submissions on the proposed amendments.

Pursuant to **Article 118 (1) (b) of the Constitution**, the Office of the Director of Public Prosecutions (ODPP) hereby submits views for your consideration in respect of the proposed amendments.



NOORDIN M. HAJI, CBS, OGW
DIRECTOR OF PUBLIC PROSECUTIONS

Encl.





OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

COMMENTS ON

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

9TH JANUARY, 2023

Page 1 of 48

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
1.	Judicature Act (Cap 8)	7 (1)	Delete the word "thirty" and substitute therefor the word "seventy".	<p>This proposal will enhance the access to justice in the Court of Appeal and reduce case backlog.</p> <p>The ODPP will benefit from speedy resolution of criminal Appeals pending at the Court of Appeal.</p> <p>The proposal is acceptable.</p>
2.	Appellate Jurisdiction Act (Cap 9)	59 (7)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions"	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
		73	Delete the expression "Attorney General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions"	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the</p>



S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				Constitution.
3.	Vexatious Proceedings Act (Cap 41)	4	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
4.	Penal Code (Cap 63)	146	Delete the word "idiot" or "imbeciles" wherever it appears and substitute therefor the words "persons with mental disability".	<p>Mental disability is still a dated term. The preferred word is "persons differently abled mentally".</p> <p>The emphasis would be on the person's humanity while recognizing and describing their situation without being insensitive. We would propose that the words to be used be "persons with different mental ability"</p>
5.	Criminal Procedure Code (Cap 75)	2	Delete the word "State Counsel" appearing in the definition of the term "public prosecutor" and substitute therefor the expression "Prosecution Counsel".	<p>The words "State Counsel", "Police Officer" and "Police Station" are being streamlined with the existing legislations.</p> <p>This proposal aligns the definitions with the relevant provisions of the</p>



S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			<p>Delete the Definition of “police officer” and substitute therefor the following new definition –</p> <p>“police officer” has the meaning assigned to it under the National Police Service Act, 2012</p> <p>Delete the definition of “police station” and substitute therefor the following new definition –</p> <p>“police station” has the meaning assigned to it under the National Police Service Act, 2012.</p>	<p>Office of the Director of Public Prosecutions Act, 2013 (<i>hereinafter</i> the ODPP Act) and the National Police Service Act, 2011.</p>
		83	<p>Delete and substitute therefor the following new section -</p> <p>(1) The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by sections 81 and 82, and by Part VIII, be vested for the time being in the Secretary of Prosecution Services, the Deputy Director of</p>	<p>The provision seeks to bring the Criminal Procedure Code in tandem with the Office of Director Public Prosecutions Act.</p> <p>However, it leaves out a cadre of officers “Principal Prosecution Counsel” which is also a cadre of prosecution counsel under the ODPP Act.</p> <p>We propose that this cadre be factored in the</p>



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

16

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

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			<p>age</p> <p><i>When a person is charged with the defilement of a girl under the age of fourteen years and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under the Sexual Offences Act, he may be convicted of that offence although he was not charged with it.</i></p>	
6.	Extradition (Commonwealth Countries) Act (Cap 77)	7, 8, 9, and 10	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring these provisions of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
7.	Evidence Act (Cap 80)	3	<p>Insert the following definition in proper alphabetical sequence -</p> <p>"Photograph" means an image created by light falling on a larger sensitive surface either photographic film or an electronic medium and made visible and permanent by chemical treatment or stored</p>	<p>This is a good proposal as it seeks to bring clarity to the definitions.</p> <p>There have been several contests as to what amounts to a photograph.</p>

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			digitally.	
		78 (1)	Insert the words "or an electronic and digital medium" immediately after the word "film",	
		125 (2)	Delete the words "a mentally disordered person or a lunatic" and substitute therefor the words "a person with a mental disability".	<p>Mental disability is still a dated term. The preferred word is "persons differently abled mentally".</p> <p>The emphasis would be on the person's humanity while recognizing and describing their situation without being insensitive. We would propose that the words to be used be "persons with different mental ability"</p>
8.	National Flag, Emblems and Names Act (Cap 99)	6	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provisions of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
9.	Public Holidays Act (Cap 110)	Schedule	Delete the expression "Utamaduni Day" and substitute therefor the	This is acceptable

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			expression "Huduma Day".	
10.	Housing Act (Cap 117)	2	<p>Insert the following definitions in proper alphabetical sequence –</p> <p>"affordable housing" means housing that is adequate, targeted for the population whose income is below the median individual or house income, and whose cost does not exceed more than thirty per cent of household or individual income per month to rent or acquire.</p> <p>"affordable housing development project" means a housing development project targeted to construct and deliver affordable housing and approved by the Cabinet Secretary responsible for matters relating to housing.</p>	This is a good proposal as it seeks to bring clarity to the definitions.
11.	Official Secrets Act (Cap 187)	10 (1) and 49 (1)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring these provisions of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable</p>

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				as it aligns the Act with the Constitution.
12.	Geneva Convention Act (Cap 198)	3 (3)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
13.	Pharmacy and Poisons Act (Cap 244)	40 (4)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
14.	Mental Health Act (Cap 248)	42 (5)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p> <p>In addition, we propose that the definition of persons with different</p>

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				mental abilities be included in the definition section.
15.	Land Consolidation Act (Cap 283)	14 (6) (b)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
16.	Land Adjudication Act (Cap 284)	33	Delete the expression "Attorney General" appearing in the proviso and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
17.	Marine Insurance Act (Cap 390)	91 (3)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
18.	Local Manufacturers (Export	10 (2)	Delete the expression "Attorney General" and substitute therefor the	This proposal will bring the provision of the Act into conformity with

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
	Compensation) Act (Cap 482)		expression "Director of Public Prosecutions".	Article 157 of the Constitution. The proposal is acceptable as it aligns the Act with the Constitution.
19.	Capital Markets Act (Cap 485A)	38	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution. The proposal is acceptable as it aligns the Act with the Constitution.
20.	Architects and Quantity Surveyors Act (Cap 525)	3 (3)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution. The proposal is acceptable as it aligns the Act with the Constitution.
21.	Prevention of Fraud (Investments) Act, 1977	27 (3)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution. The proposal is acceptable as it aligns the Act with the Constitution.

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
22.	Higher Education Loans Board Act, 1995	24	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
23.	Retirement Benefits Act, 1997	54 (1)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
24.	Co-operative Societies Act, 1997	94 (3)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
25.	Central Depositories Act, 2000	63	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p>

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				The proposal is acceptable as it aligns the Act with the Constitution.
26.	Copyright Act, 2001	2, 30AA, 30B, 46, 46A, 46B, 46C, and 46E		The proposed amendments are not within the mandate of the ODPP
27.	Anti-Corruption and Economic Crimes Act, 2003	25A (1), 37 (6), and 62 (5)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution, 2010. The proposal is acceptable as it aligns the Act with the Constitution, 2010.
		62	Delete subsection (6) Insert the following new subsections (6A) Notwithstanding the provisions of any other law where a state officer is under investigations for or has been charged with corruption or economic crimes, the Commission may by an <i>ex-parte</i> application in the High Court seek an order barring the officer from accessing his or her office or exercising the powers of that office including participating in decision making, voting and	The deletion of subsection (6) is progressive as it ensures that the law is applied equally irrespective of status and office. It is unconstitutional to bar a state officer from accessing his or her office or exercising the powers of that office when the matter is pending investigations, as it infringes on the right to fair hearing under Article 50 (2) of the Constitution. However, the EACC is at liberty to make an <i>ex-parte</i> application for



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

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				<p>b) intimidate, threaten or otherwise interfere with witnesses or</p> <p>c) interfere with investigations in any other manner”</p>
28.	Sexual Offences Act, 2006	40	Delete the expression “Attorney General” and substitute therefor the expression “Director of Public Prosecutions”.	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
29.	National Museums and Heritage Act, 2006	57 (2)	Delete the expression “Attorney General” and substitute therefor the expression “Director of Public Prosecutions”.	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
30.	Labour Institutions Act, 2007	35 (1) (k)	Delete the expression “Attorney General” and substitute therefor the expression “Director of Public Prosecutions”.	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution, 2010.</p> <p>The Cases SHALL be instituted with the consent of the Director of</p>

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				Public Prosecutions or officers acting on delegated authority by the DPP Pursuant to Article 157 (9) of the Constitution and Section 22 of the ODPP Act, 2013.
31.	Accountants Act, 2008	43	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
32.	International Crimes Act, 2008	5, 19 (2) & (3), 21(1)(b), 23 (2), 24, 25 (3)(a), 26 (1) & (2), 76, 77 (2), 78, 79, 84, 85 (4), 86, 87 (1), 88, 89, 90, 91, 92, 93 (2)(b), 94, 95, 96 (1) & (2), 102 (2) & (3), 103, 104, 105, 106, 107, 108, 109, 110, 111, 112 (1), (3), & (4), 113 (2) & (3), 114 (1) & (2), 115 (1), 116, 118 (2), 119, 120, 121 (b), 122, 124, 126, 127 (6), 129, 153 (1) & (2),	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring these provisions of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p> <p>Further, we propose that the definition of "prosecutor" under section 2 of the Act be expanded to include the Director of Public Prosecutions under Article 157 of the Constitution.</p>

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
		154, 155, 156, 157, 158, 159, 160, 168, and 171.		
33.	Biosafety Act, 2009	53	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
34.	Merchant Shipping Act, 2009	16	Delete	
35.	The Vetting of Judges and Magistrates Act 2011 (No. 2 of 2010)	18 (1)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
36.	Prevention of Organised Crimes Act, 2010	14	Delete the expression "five hundred thousand" and substitute thereof the words "ten million shillings".	<p>This increases the fine amount substantially.</p> <p>This is a good proposal as it enhances the discretion of the magistrate where the situation demands a stiffer penalty and guides</p>

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

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				The proposal is acceptable as it aligns the Act with the Constitution.
38.	Judicial Service Commission Act, 2011	38	<p>Insert the following new subsection immediately after subsection (1) -</p> <p>(1A) The commission shall submit the annual report to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>The proposal seeks to have the JSC annual report presented within 6 months of the end of the year to which it relates.</p> <p>The proposal is acceptable.</p>
39.	Independent Electoral and Boundaries Commission Act, 2011	24 (1)	Delete the word "three" and substitute therefore the word "six".	<p>The proposal seeks to have the IEBC annual report presented within 6 months of the end of the year to which it relates.</p> <p>The proposal is acceptable.</p>
40.	Salaries and Remuneration Commission Act, 2011	24	<p>Insert the following new subsection immediately after subsection (1) -</p> <p>(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end</p>	<p>The proposal seeks to have the SRC annual report presented within 6 months of the end of the year to which it relates.</p> <p>The proposal is acceptable.</p>

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			of the year to which it relates.	
41.	Kenya National Commission on Human Rights Act, 2011	53	<p>Insert the following new subsection immediately after subsection (1) -</p> <p>(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>The proposal seeks to have the KNCHR annual report presented within 6 months of the end of the year to which it relates.</p> <p>The proposal is acceptable.</p>
42.	National Gender and Equality Commission Act, 2011	53	<p>Insert the following new subsection immediately after subsection (1) -</p> <p>(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>The proposal seeks to have the NGEC annual report presented within 6 months of the end of the year to which it relates.</p> <p>The proposal is acceptable.</p>
43.	Commission on Revenue Allocation Act, 2011	23	<p>Renumber the existing provision as subsection (1).</p> <p>Insert the following new subsection immediately after subsection (1) -</p>	<p>The proposal seeks to have the CRA annual report presented within 6 months of the end of the year to which it relates.</p> <p>The proposal is acceptable.</p>

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.	
44.	Ethics and Anti-Corruption Commission Act, 2011	27 (2)	Delete the word "three" and substitute therefore the word "six".	The proposal seeks to expand the time allotted to the EACC for the presentation of its annual report from three (3) to six (6) months. The proposal is acceptable.
45.	Tourism Act, 2011	116	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution. The proposal is acceptable as it aligns the Act with the Constitution.
46.	National Police Service Commission Act, 2011	26 (2)	Delete the word "three" and substitute therefor the word "six".	The proposal seeks to expand the time allotted to the NPS Commission for the presentation of its annual report from three (3) to six (6) months.

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				The proposal is acceptable.
47.	National Land Commission Act, 2012	33	<p>Insert the following new subsection immediately after subsection (1) -</p> <p>(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>The proposal seeks to have the NLC annual report presented within 6 months of the end of the year to which it relates.</p> <p>The proposal is acceptable.</p>
48.	Leadership and Integrity Act, 2012	12A	<p>Renumber the provision as subsection (1) and insert the words "or public office" after the words "state office".</p> <p>Insert the following new subsections -</p> <p>(2) Where a public entity is recruiting staff, it shall, within seven days after shortlisting of candidates for any position for which appointment is considered, submit the list of all shortlisted candidates to the Commission for integrity suitability verification.</p>	The proposal is not acceptable as this may impede the independence of the Offices.

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			<p>(3) The Commission shall upon receipt of the list of shortlisted candidates verify the information regarding them and make recommendations to the public entity on the integrity suitability of the shortlisted persons.</p> <p>(4) In making recommendations under subsection (3), the Commission may consider any other information with respect to the integrity suitability of the applicant.</p> <p>(5) The recruiting entity shall take into account the recommendations on the integrity suitability of the candidates in making appointment decisions.</p>	
		19 (6)	Delete the words "fail to submit annual statements of account" and substitute therefor the words "fails to submit statements of account annually as required under section 19 (3)".	This proposal makes grammatical corrections and is acceptable.
		40	Renumber the provision as subsection (1) and insert the following new subsection -	This proposal seeks to empower the High Court to invalidate a state officer's appointment for



S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			(2) The High Court may upon application by any person, declare the assumption of office by a state officer to be invalid for want of executing a commitment to the specific leadership and integrity code.	failure to execute a commitment to a specific leadership code. This proposal is unclear as it fails to specify which codes are to be executed by the said state officials.
49.	Teachers Service Commission Act, 2012	41	Insert the following new subsection immediately after subsection (1) - (1A) The Commission shall submit the annual report in subsection (2) to the President and the National Assembly within six months after the end of the year to which it relates.	The proposal seeks to have the TSC annual report presented within 6 months of the end of the year to which it relates. The proposal is acceptable.
50.	National Transport and Safety Authority Act, 2012	16	Delete the word "three" and substitute therefor the word "five".	It seeks to expand the period for the appointment of the Director General for a renewable period of 5 years rather than the current 3 years.
51.	Kenya Law Reform Commission Act, 2015	N/A	N/A	N/A
52.	Scrap Metal Act,	2	Insert the following new definitions in proper	The proposal in the Bill seeks to provide accurate

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
	2015		<p>alphabetical sequence -</p> <p>“Authority” means the Kenya Revenue Authority established under section 3 of the Kenya Revenue Authority Act;</p> <p>“critical national infrastructure” means physical and virtual assets or facilities, whether owned by private or public entities which are essential to the provision of vital services to the public for their social and economic wellbeing, and which if destroyed, degraded or rendered unavailable, would impact on the social or economic wellbeing of the nation or affect government’s ability to undertake national defence and security;</p> <p>“electrical rewinder” means a person who deals in the repair or rewinding of electric motors;</p> <p>“smelter” means an installation or factory for smelting metal from its ore or means a person engaged in the business</p>	<p>definitions of various terms to protect critical infrastructure.</p> <p>It is however noteworthy that although the Memorandum of Objects and Reasons indicates that the Bill seeks to provide for a special license for dealing in copper, aluminium and their alloys, this proposal is not included in the text of the Bill.</p> <p>The Memorandum also indicates that the Bill intends to restrict the disposal of critical infrastructure to the Numerical Machining Complex and the Kenya Shipyard Limited. Further, that the Bill had proposed regulation of imports and exports.</p> <p>These proposals are not included in the text of the Bill.</p>



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

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			after subsection (2) - (2A) The Commission shall submit the annual report in subsection (2) to the President and the National Assembly within six months after the end of the year to which it relates.	presented within 6 months of the end of the year to which it relates. The proposal is acceptable.
55.	Water Act, 2016	14 (1) (f)	Insert the following new paragraph immediately after paragraph (e) - (ea) the Attorney-General or his representative.	The proposal seeks to include the Attorney General as a member of the Water Resources Management Board. The proposal is acceptable.
		17 (1)	Insert the words "and in accordance with the guidelines made by the Salaries and Remuneration Commission" immediately after the word "appointment".	The proposal seeks to bring the section on appointment of the Chief Executive Officer into the ambit of the SRC recommendations. The proposal is acceptable.
		31 (1)	Delete and substitute therefor the following subsection - (1) The powers and functions of the Water	The proposal seeks to allow the representatives to sit in the board in place of the designated office holder.

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			Cabinet Secretary from counties within the basin area.	
		66	<p>Insert the following new subsection immediately after subsection (2) -</p> <p>(3) The Cabinet Secretary shall, on the recommendation of the respective Board of Water Development Agency appoint a Chief Executive Officer of the respective water works agency on such terms and conditions as may be specified in the instrument of appointment and in accordance with the guidelines made by the Salaries and Remuneration Commission.</p>	
		71 (1)	<p>Delete and substitute the following new subsection -</p> <p>(1) The powers and functions of the Regulatory Board shall be excercised and performed under the direction of the Regulatory Board, hich shall consist of -</p>	

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			<ul style="list-style-type: none"> (a) a chairperson, who shall be appointed by the President; (b) the Principal Secretary responsible for matters relating to finance or his representative; (c) the Principal Secretary responsible for matters relating to water or his representative; (d) the Attorney-General or his representative; (e) the Chief Executive Officer; and (f) six other members appointed by the Cabinet Secretary. 	
		73	Delete the words "the Cabinet Secretary for Public Service may determine on the advice of the Salaries and Remuneration Commission" and substitute therefor the words "may be specified in the instrument of appointment and in accordance with the guidelines made by the Salaries and Remuneration	



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

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			(1) The fund shall have a Chief Executive Officer who shall be appointed by the Cabinet Secretary on the recommendation of the Board of Trustees on such terms and conditions of service as may be specified in the instrument of appointment and in accordance with the guidelines made by the Salaries and Remuneration Commission.	
56.	Bribery Act, 2016	1	Delete the expression "Bribery Act" and substitute therefor the expression "Anti-Bribery Act".	The proposal seeks to amend the title of the bill from the Bribery Act to Anti-Bribery Act. This proposal is acceptable to reflect the intent of the Act.
		4	Insert the words "public entity" immediately after the words "public officers".	Seeks to include public entities as those to whom the Act applies. The proposal is acceptable.
		5	Delete the word "who" and substitute therefor the words "if the person offering, promising or	Indicates clarity in the description of the offender.

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

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				private individuals. The proposal is acceptable.
57.	Public Service Commission Act, 2017	90 (1)	Delete the word "three" and substitute therefor the word "six".	The proposal seeks to expand the time allotted to the PSC for the presentation of its annual report from three (3) to six (6) months. The proposal is acceptable.
58.	Energy Act, 2019	2	Delete the definition of the term "distribution licence". Insert the following new definition in proper alphabetical sequence - "distribution licence" means a document or instrument authorising a person to distribute energy in the manner described in the document or instrument, in that person's authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;	The proposal expands the definition of the licence to an acceptable scope.

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

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			development and implementation of a national energy efficiency and conservation action plan.	
		9 (1)	Insert the word "a" immediately after the word "of".	The proposal does not fit into the section it seeks to amend and the same is rejected.
		10	<p>Delete the word "with the exception of crude oil" appearing in paragraph (a) (ii);</p> <p>Delete paragraph (ii) and substitute therefor the following new paragraph -</p> <p>(ii) make proposals to the Cabinet Secretary for purposes of making regulations on energy efficiency and conservation.</p>	<p>The proposal aims to expand the mandate of the Authority.</p> <p>The proposal is acceptable.</p>
		11	<p>Renumber the provision as subsection (1) and add the following subsections -</p> <p>(2) Notwithstanding subsection (1), the Cabinet Secretary shall issue a special licence for dealing in copper,</p>	<p>The amendment seeks to regulate the dealing of copper, aluminium and their alloys.</p> <p>The proposal is acceptable.</p>

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			aluminium and their alloys. (3) An application for a special licence shall be made in accordance with section 10.	However, there is a need for clarity on the specific paragraph in section 10 for the application of a special licence.
		12 (1)(e)	Delete	The proposal aims to remove the position of CEC member for the Board of the Energy and Petroleum Regulatory Authority. There is no objection.
		18 (3)(a)	Delete the words "one million" and substitute therefor the words "five million".	The proposal does not fit into the section it seeks to amend and the same is rejected.
		18 (3)(b)	Delete the word "five" and substitute therefor the word "ten".	The proposal does not fit into the section it seeks to amend and the same is rejected.
		20 (1)	Delete the phrase "half of a" appearing in paragraph (a).	The proposal seeks to increase the funds of the EPRA from the levies received from the the sale of electricity and petroleum products.
		20	Delete the word "levies" appearing in the provisio.	The proposal will cause the section incomprehensible.

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				This should be corrected.
		20 (4)	Delete the word "one" and substitute therefor the word "five".	The proposal does not fit into the section it seeks to amend and the same is rejected.
		22 (2)	Delete the words "one million" and substitute therefor the words "five million".	The proposal does not fit into the section it seeks to amend and the same is rejected.
		24	<p>(1) Insert the words "critical national" immediately after the word "the".</p> <p>Insert the following new sections immediately after section (1) -</p> <p>(1A) A state entity responsible for critical national infrastructure shall dispose scrap metal from critical national infrastructure to the Numerical Machining complex and the Kenya Shipyard Limited for smelting into billets.</p> <p>(1B) Where there is inadequate capacity at the Numerical Machining complex and Kenya</p>	<p>The proposal does not fit into the section it seeks to amend.</p> <p>This should be corrected.</p>

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			Shipyards Limited, the respective state entity through a written consent from the Numerical Machining Complex and the Kenya Shipyards Limited, shall seek approval from the Council to partner with a local smelter directly without involving a broker.	
		24 (2)	Delete the word "ten" and substitute therefor the word "twenty". Delete the word "three" and substitute therefor the word "seven".	The proposal does not fit into the section it seeks to amend and the same is rejected. This should be corrected.
		26 (1)	Insert the words "or import" immediately after the word "export".	The proposal does not fit into the section it seeks to amend and the same is rejected. This should be corrected.
		26 (2)	Insert the words "or import" immediately after the word "export".	The proposal does not fit into the section it seeks to amend and the same is rejected. This should be corrected.
		26 (3)	Insert the words "in consultation with the Authority." immediately	The proposal does not fit into the section it seeks to amend and the same is

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			after the word "Secretary"	rejected. This should be corrected.
		26	Insert the following new subsection immediately after subsection (3) - (3A) The certificate issued under subsection (3) shall indicate the nature, quantity and consideration from scrap metal to ensure compliance with the approved limits.	The proposal does not fit into the section it seeks to amend and the same is rejected. This should be corrected.
		26 (4)	Insert the word "of" immediately after the word "terms".	The proposal seeks to correct a grammatical error. This amendment is acceptable.
		30 (1)(a)	Insert the words "critical national" immediately after the word "vandalized".	The proposal does not fit into the section it seeks to amend and the same is rejected. This should be corrected.
		30 (1)(e)(ii)	Insert the words "smelter, electrical rewinder, steel fabricator" immediately after the word "miller".	The proposal does not fit into the section it seeks to amend and the same is rejected.

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				This should be corrected.
		45 (1)	Delete the words "who shall be the Secretary to the Board" appearing in paragraph (d).	The amendment is acceptable.
		45 (1)(e)	Delete the word "three" and substitute therefor the word "seven".	The proposal increases the number of members to be appointed by the Cabinet Secretary to the Board of the Rural Electrification and Renewable Energy Corporation. The amendment is acceptable.
		45	Delete paragraph (f).	The proposal aims to remove the position of members appointed by the Council of Governors to the Board of the for the Board of the Rural Electrification and Renewable Energy Corporation. There is no objection.
		76 (2)	Insert the following new paragraph immediately after paragraph (g) - (h) the Managing Director of Kenya Power and Lighting Company PLC or his or her	The proposal seeks to add the MD of KPLC to the Renewable Energy Resource Advisory Committee.

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			representative.	The amendment is acceptable.
		82	Delete the word "Authority" and substitute therefor the expression "Renewable Energy Resource Advisory Committee".	The amendment aims to correct an error on the mandate of the Renewable Energy Resource Advisory Committee. The amendment is acceptable.
		98 (1)(d)	Insert the word "with" immediately after the word "compliance".	The proposal seeks to correct a grammatical error. This amendment is acceptable.
		100 (1)(b)	Insert the word "of" immediately after the word "type".	The proposal seeks to correct a grammatical error. This amendment is acceptable.
		117	Delete the word "one" and substitute therefor the words "one half of a".	The proposal seeks to reduce the capacity of electrical energy that does not require a licence. There is no objection to the amendment.
		129 (2)	Delete the word "three" and substitute therefor	The proposal increases the period for one to

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			the word "four".	submit audited accounts after the end of each financial year. The amendment is acceptable.
		149 (3)	Delete the word "licence" and substitute therefor the word "certificate".	The amendment is acceptable to ensure better comprehension of the section.
		154 (2)	Delete the word "meters" and substitute therefor the word "metres".	
		166 (3)	Delete and substitute therefor the following new subsection - (3) For the avoidance of doubt, the licensee shall not be liable to any penalty under subsection (1) or to pay compensation under subsection (2) if the failure, poor quality or irregularity of electricity supply was caused by third party interference to the licensee's accident or force majeure, or was so slight as not to materially affect the quality or value of the supply.	The amendment aims to expound on the penalties a licensee is liable to. The amendment is acceptable.
		166 (4)	Delete and substitute	The amendment aims to

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			<p>with the following new subsection -</p> <p>(4) The Cabinet Secretary may make regulations to give effect to this section subject to the grid attaining the quality and reliability of supply and service as prescribed by the Authority.</p>	<p>give the Cabinet Secretary the mandate to enforce the section within given parameters.</p> <p>The amendment is acceptable.</p>
		167 (1)	<p>Delete the expression "(1)".</p> <p>Delete the word "electrician" appearing in paragraph (o) and substitute therefor the words "electrical worker".</p>	<p>The proposal seeks to correct a numerical and grammatical error.</p> <p>This amendment is acceptable.</p>
		169 (2)	<p>Delete and substitute therefor the following new subsection -</p> <p>(2) Any vessel that is used to convey the vandalised or stolen equipment or appliances referred to in subsection (1) shall be forfeited to the State.</p>	<p>The amendment aims to provide clarity to the section.</p> <p>The amendment is acceptable.</p>
		187	<p>Delete the words "coordinate the development and implementation of a" and substitute therefor the words "develop and</p>	<p>The proposal seeks to make the section precise.</p> <p>This amendment is</p>



S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			implement”.	acceptable.
		199 (1)	Insert the word “Gazette” immediately after the words “by notification in the”.	The proposal seeks to provide clarity on the way of notification. This amendment is acceptable.
		208	Delete the words “on the recommendation of” and substitute therefo the words “in consultation with”.	The proposal seeks to provide clarity on the role of the Authority. This amendment is acceptable.
		216 (1)	Delete the word “Consolidated”.	

NPS Comments on Statute law (Miscellaneous Amendment) Bill (National Assembly Bill No. 60 of 2022)

S/No.	Name of the Act	Section	Proposed Amendment	Justification	Comment
1.	The National Flags, Emblems and Names Act (Cap.99)	S. 6	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions"	To harmonise the provisions of the Act with the functions of the Director of Public Prosecutions under Article 157(2) of the Constitution.	No Objection
2.	The Public Holidays Act (Cap 110)	Schedule	Delete the expression "Ujamaaduni Day" and substitute therefor the expression "Huduma Day"	To provide that the 10 th October shall be known as Huduma Day and 26 th of December shall be known as Ujamaaduni Day	No Objection
3.	The Counter Trafficking in Persons Act, 2010 (NO. 8 of 2010)	S. 19(2)(e)	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions"	To harmonise the provisions of the Act with the Provisions of Article 157(2) of the Constitution relating to the functions of the Director of Public Prosecutions	No Objection
4.	The Prevention of Organised Crimes Act, 2010 (No. 6 of 2010)	S. 14	Delete the expression "five hundred thousand shillings" and substitute therefor the word the words "ten million shillings"	a. Harmonise the Act with Provision of Article 157(2) of the Constitution relating to the functions of the Director of Public Prosecutions	No Objection
		S.3	Delete the expression "Thirty days" and substitute therefor the words "ninety days"	b. To enhance the penalty organized on crime	No Objection
		S. 17 (9)	Delete the paragraph (b) and substitute therefor the following new paragraph- (b) Inspector General of the National Police Service.	c. To extend the period in which an order obtained in relation to tracing of property shall lapse.	No Objection
		S. 27 (3)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions"	d. Apply the phrase "Inspector General of Police" in place of "Commissioner of Police"	No Objection
5.	The Prevention of Fraud (Investments) Act ,1977	S. 27 (3)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions"	To harmonise the provisions of the Act with the functions of the Director of Public Prosecutions under Article 157(2) of the Constitution.	No Objection

