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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

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*SNA*  
*23/9/25*

THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025


PUBLIC PETITIONS COMMITTEE

PARLIAMENT  
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REPORT ON-

CONSIDERATION OF PUBLIC PETITION NO. 8 OF 2024 BY HON. ESTHER  
PASSARIS, MP, ON BEHALF OF CONCERNED CITIZENS OF KENYA,  
REGARDING AN AMENDMENT TO THE PENAL CODE TO PROVIDE FOR THE  
OFFENCE OF SEXTORTION

SEPTEMBER, 2025

 <b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
<b>DATE: 23 SEP 2025</b>	
<b>DAY:</b> <i>Wednesday</i>	
<b>TABLED BY:</b>	<i>Hon. Muchang's Karemba/MP chairperson</i>
<b>CLERK-AT THE-TABLE:</b>	<i>A. Shibusko</i>

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

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

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## CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasure and honour to present to this House the Report of the Committee on the consideration of Public Petition No. 8 of 2024 regarding an amendment to the Penal Code to provide for the offence of sextortion. The petition was presented to the House pursuant to Standing Order No. 225 (2) (a) by the Member of Parliament for Nairobi County, Hon. Esther Passaris, M.P., on behalf of concerned citizens of Kenya.

The petitioners prayed that the Committee propose amendments to the Sexual Offences Act, and other relevant criminal laws to explicitly define sextortion as an offence, make clear provisions on penalties, support for victims and for connected purposes and takes any other measures necessary and appropriate in the circumstances of this Petition to address the menace of sextortion to protect the rights and dignity of all citizens.

In consideration of the Petition, the Committee collected the views from the petitioners, the Kenya Law Reform Commission (KLRC), the Office of the Attorney General and Department of Justice, and the Ethics and Anti-Corruption Commission (EACC).

The Committee observed that since sextortion, as defined by the petitioners, is the abuse of a person's power to give or withhold goods, services, or any other thing of value in exchange for sexual intercourse or other sexual activities, the aspects are adequately provided for in Section 43 of the Sexual Offences Act.

Further, the elements of sextortion can be construed with other offences, such as sexual harassment (Section 23), abuse of authority (Section 24), and coercion (Section 43) under the Sexual Offences Act. Therefore, enacting such legislation would duplicate the Sexual Offences Act and the Computer Misuse and Cybercrimes Act, 2018.

Therefore, the Committee rejected the proposal to amend the Sexual Offences Act (Cap. 63A) and other relevant criminal laws to explicitly define sextortion as an offence, make clear provisions on penalties, support for victims and for connected purposes;

The Committee appreciates the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support. The Chairperson expresses gratitude to the Committee Members for their devotion and commitment to duty during the consideration of the Petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I wish to lay the Report on the consideration of Public Petition No. 8 of 2024 by Hon. Esther Passaris, M.P., on behalf of concerned citizens of Kenya, regarding an amendment to the Penal Code to provide for the offence of sextortion to the House.

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

Date: 23/09/25

## **PART ONE**

### **I PREFACE**

#### **I.1 Establishment and Mandate of the Committee**

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

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

## **1.2 Committee Membership**

The Public Petitions Committee was first constituted in October 2022 and reconstituted in March 2025 and comprises the following Members:

### **Chairperson**

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

**United Democratic Alliance (UDA)**

### **Vice Chairperson**

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

**United Democratic Alliance (UDA)**

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

**United Democratic Alliance (UDA)**

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

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

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

**Independent**

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

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

Hon. Bidu Mohamed Tubi, M.P.  
Isiolo South

**Jubilee Party (JP)**

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

**United Democratic Alliance (UDA)**

Hon. Peter Irungu Kihungi, M.P.  
Kangema Constituency

**United Democratic Alliance (UDA)**

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

**United Democratic Alliance (UDA)**

Hon. John Bwire Okano, M.P.  
Taveta Constituency

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

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

**Orange Democratic Movement  
(ODM)**

Hon. Peter Mbogho Shake, M.P.  
Mwatate Constituency

**Jubilee Party (JP)**

Hon. Suzanne Ndunge Kiamba, MP  
Makueni Constituency

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

Hon. Sloya Clement Logova, M.P.  
Sabatia Constituency

**United Democratic Alliance (UDA)**

### **I.3 Committee Secretariat**

The secretariat comprises the following:

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

Ms. Anne Shibuko  
**First Clerk Assistant**

Ms. Miriam Modo  
**First Clerk Assistant**

Mr. Willis Obiero  
**Clerk Assistant III**

Mr. Bernard Kipchumba  
**Clerk Assistant III**

Ms. Patricia Gichane  
**Legal Counsel II**

Ms. Nancy Ouma  
**Research Officer III**

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

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

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

Mr. Peter Mutethia  
**Audio Officer**

## **PART TWO**

### **2 BACKGROUND OF THE PETITION**

#### **2.1 Introduction**

1. Public Petition No. 8 of 2024 regarding amendment to the Penal Code to provide for the offence of sextortion was presented to the House on 17<sup>th</sup> April, 2024, by the Member of Parliament for Nairobi County, Hon. Esther Passaris, M.P., on behalf of concerned citizens of Kenya.
2. The petitioners defined sextortion as the abuse of power to coerce individuals into providing sexual favours. They averred that the phenomenon has become a pressing issue in the country, causing immense harm to victims and eroding trust in public and private institutions.
3. They stated that the demand for sex in exchange for essential resources, services and opportunities is both an infringement of human rights and a significant obstacle to achieving development goals predicated on gender equality, transparent and accountable governance.
4. The petitioners submitted that the law does not specifically recognise or define sextortion as a form of sexual exploitation, harassment and corruption, thus hindering effective prosecution and victim protection.
5. Further, the petitioners noted that although Section 37 of the Computer Misuse and Cybercrime Act, 2018, addresses certain aspects related to sextortion, there remains a critical need to address these issues within the broader legal context comprehensively.
6. They also submitted that sextortion disproportionately affects vulnerable women and girls due to poverty, lack of education, political disenfranchisement and various forms of disability. However, men and boys are also susceptible.
7. The Petitioners stated that the unchecked prevalence of sextortion not only inflicts immediate harm upon individuals but also undermines efforts to empower women and ensure their full and equal participation in society, thus impeding sustainable development.

#### **2.2 Petitioners Prayers**

8. The Petitioners prayed that the National Assembly, through the Public Petitions Committee—
  - a) Proposes amendments to the Penal Code, Sexual Offences Act, and other relevant criminal laws to explicitly define sextortion as an offence, make clear provisions on penalties, support for victims and for connected purposes; and
  - b) Takes any other measures necessary and appropriate in the circumstances of this Petition to address the menace of sextortion to protect the rights and dignity of all citizens.

## PART THREE

### 3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

#### 3.1 The Petitioners

The petitioners, led by the Member of Parliament for Nairobi County, Hon. Esther Passaris, M.P., appeared before the Committee on Tuesday, 10<sup>th</sup> September 2024, and submitted as follows—

9. They submitted that sextortion was a silent corruption with immense effects on girls and women, but it has not been criminalized. It involves coercion and not consent. For instance, sex for access to water, which is common in informal settlements, sex for fish, sex for jobs, sex for grades, sex for police protection, among others.
10. The petitioners further argued that the law did not recognise sextortion as a distinct entity within sexual exploitation and corruption, hence hindering effective prosecution and victim protection. Therefore, there was a need to amend the penal code that defines sextortion and make it an offence.
11. They also stated that many perpetrators of sextortion were not prosecuted, as there was no structure to deal with it, hence the need for the proposed law to protect the victims. However, there is a thin line between gender abuse and sextortion.
12. In addition, they argued that studies within informal settlements revealed that 41 per cent of women were victims of sextortion. Further, the rural areas in western Kenya have also experienced cases of sex for water. Various Community-Based Organisations raise awareness on the matter through psycho social centres.
13. The petitioners also stated that the proposed law on sextortion would protect men from women offering themselves for sex by emphasizing that, in cases where a man is approached, he has the choice to refuse. Seduction cannot occur without mutual consent, and therefore, sextortion is not a matter of seduction but rather extortion, where one is forced to offer their body in exchange for a service.
14. They proposed a sentence of 15 years imprisonment and a fine of Kshs. 5 million shillings, or both, is proposed to serve as a deterrent for the offence.

#### 3.2 Kenya Law Reform Commission

The Acting Secretary, Kenya Law Reform Commission (KLRC), Mr. Peter Musyimi, vide a letter dated 20<sup>th</sup> May 2025, submitted as follows—

15. He defined Sextortion as a blended word derived from the words "sex" and "extortion". The International Association of Women Judges defines sextortion as the abuse of power to obtain

a sexual benefit or advantage. He explained that for sexual extortion, there has to be abuse of authority in the exchange of sex for a service. Sextortion also covers instances where someone makes demands with the threat of publishing another person's sexually embarrassing photos or videos. Sextortion is more psychological than physical coercion.

16. He also stated that sextortion affects vulnerable girls and women who seek various services, including national identity cards, sanitary pad supplies, education, training, and job placements. He gave the example of sex for fish along the coastlines and shores, where female fishmongers give in to the sexual demands of fishermen so that they can attain the first pick from the boats. He also cited cases in which women and girls are pressured into sex in exchange for water, especially in the slums. As well as cases of female traders being sexually exploited by brokers and market officials.
17. He informed the Committee that a report by the Kenya ICT Action Network on the challenges faced by women in Kenya on the internet listed non-consensual distribution of intimate images and sexual harassment as some of the most prominent violations of their rights across digital platforms. The report further noted that professional and distinguished women, including women human rights defenders, women in politics, journalists, women with disabilities and women from marginalised groups, are frequent targets of online gender-based violence.
18. He added that female politicians in Kenya have been vulnerable to image-based disinformation campaigns that manipulate media to sexualize them. This made them fodder for extortion. While this is common against women, men have also been victims of this form of sextortion. The Acting Chief Executive Officer argued that these cases set out the need for urgent legislative intervention to include the offence of sextortion in the Statute Book.
19. The Committee was also informed that sextortion was difficult to prosecute since, as stated in the petition, existing legislation does not define it or recognize it as a form of sexual offence. The closest offence to sextortion in the Statute Book is sexual harassment created under section 23 of the Sexual Offences Act, Cap. 63A. However, the offence of sexual harassment is limited to instances of employment, education and services offered by public officials. Thus, it leaves victims of other types of predators vulnerable.
20. Further, Section 37 of the Computer Misuse and Cybercrimes Act, Cap. 79 C criminalizes the publishing or distribution of intimate or obscene images of other people without consent. However, the section does not provide the extortion and blackmail that may be employed with the threat of publishing such images. While the actual publishing is an offence, victims may not wish to have such images published in the first place, hence they give in to the extortionists' demands. i
21. In conclusion, the Acting Secretary supported the proposal to amend the law to create an offence that covers all forms of sextortion. KLRC considers the Sexual Offences Act the most appropriate law to amend to provide for the offence of sextortion. In addition, KLRC recommended that the proposed new provision should follow Section 23 of the Sexual Offences Act, which covers sexual harassment and numbered section 23A.

22. In relation to the proposal to provide support to victims of sextortion, KLRC recommended that it was not necessary to make any further changes to the law to facilitate support for the victims, as the Victim Protection Act, Cap. 79A comprehensively addresses this issue.

### **3.3 Office of the Attorney General and Department of Justice**

The Attorney General, vide a letter dated 21<sup>st</sup> May 2025, submitted as follows—

23. The Attorney General submitted that the Sexual Offences Act (Cap. 63A) provides for sexual offences, their definition, prevention, and the protection of all persons from harm from unlawful sexual acts. Sextortion is a sexual offence which amounts to intentionally demanding sexual intercourse or other sexual activities in exchange for goods, services, or any other thing of value in the demanding person's power to give or withhold.

24. He further stated that the Sexual Offences Act provides for sexual offences that relate to abuse of a position of power or authority. Section 23 of the Sexual Offences Act provides that any person who, being in a position of authority or holding a public office, persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual harassment.

25. Further, Section 24 of the Sexual Offences Act provides that any person who, being in a position of authority or trust, takes advantage of his or her position and induces or seduces a person in their care or under their authority to have sexual intercourse commits an offence.

26. In addition, he submitted that the provision applies to people in positions of authority or trust including the superintendent or manager of a jail, remand home or children's or any institution or any other place of custody, law enforcement officer, manager of any hospital or staff of a hospital, head teacher, teacher or employee in a primary or secondary school or special institution of learning and other persons in position of trust.

27. Section 43(1)(a) of the Sexual Offences Act provides that an act is intentional and unlawful if it is committed in any coercive circumstance. Section 43(2) (c) provides that the coercive circumstances referred to in subsection (1)(a) include any circumstances where there is abuse of power or authority to the extent that the person in respect of whom an act is committed is inhibited from indicating his or her resistance to such an act, or his or her unwillingness to participate in such an act. Since sextortion is the abuse of a person's power to give or withhold goods, services, or any other thing of value in exchange for sexual intercourse or other sexual activities, it amounts to an intentional and unlawful Act under Section 43 of the Sexual Offences Act.

28. In light of the foregoing, the Office of the Attorney General and Department of Justice submitted that the proposed offence of extortion had similar elements to the offence of sexual harassment and the offence of sexual offences relating to the position of authority and persons in a position of trust provided for under Sections 23 and 24 of the Sexual Offences Act. Further, the offence can be construed as an intentional and unlawful Act under Section 43 of the Sexual Offences Act.

29. In conclusion, the Attorney General submitted that the amendment of the Penal Code and the Sexual Offences Act to provide for the offence of sextortion was not necessary because sexual offences relating to the abuse of a position of power or authority are provided for under Sections 23 and 24 of the Sexual Offences Act.

### **3.4 Ethics and Anti-Corruption Commission**

The Deputy Director, Asset Tracing, Ethics and Anti-Corruption Commission vide a letter dated 17<sup>th</sup> October 2024, submitted as follows—

30. The EACC supported the proposal to amend the Penal Code and Sexual Offences Act and other relevant criminal laws to define sextortion as a criminal offence explicitly. The justification for the proposal is the fact that there is a gap in the criminal law as sextortion is not expressly criminalised as a form of sexual exploitation, harassment and corruption.

31. The Commission proposed incorporating the offence of sextortion into the Penal Code, the Sexual Offences Act, and other relevant Criminal laws, including the Anti-Corruption Laws such as the Leadership and Integrity Act, the Bribery Act, and the Anti-Corruption and Economic Crimes Act. The Commission noted that in other jurisdictions, sextortion is criminalized through the anti-corruption legal framework, such as Section 25 of the United Republic of Tanzania's Prevention and Combating of Corruption Act, Cap 329.

## PART FOUR

### 4 COMMITTEE OBSERVATIONS

Upon consideration of the Petition, submissions from the Petitioners, the Kenya Law Reform Commission (KLRC), the Office of the Attorney General and Department of Justice, and Ethics and Anti-Corruption Commission (EACC), the Committee observed as follows —

32. The Petitioners defined sextortion as the abuse of power to coerce individuals into providing sexual favours.
33. While sextortion is not expressly defined in the existing laws, the abuse of power to coerce individuals into providing sexual favours as defined by the petitioners, is provided for in the Sexual Offences Act and the Computer Misuse and Cybercrimes Act.
34. Section 43(1)(a) of the Sexual Offences Act provides that an act is intentional and unlawful if it is committed in any coercive circumstance. Section 43(2) (c) provides that the coercive circumstances referred to in subsection (1)(a) include any circumstances where there is abuse of power or authority to the extent that the person in respect of whom an act is committed is inhibited from indicating his or her resistance to such an act, or his or her unwillingness to participate in such an act.
35. Since sextortion, as defined by the petitioners, is the abuse of a person's power to give or withhold goods, services, or any other thing of value in exchange for sexual intercourse or other sexual activities, the aspects are adequately provided for in Section 43 of the Sexual Offences Act.
36. Further, the elements of sextortion can be construed with other offences, such as sexual harassment (Section 23), abuse of authority (Section 24), and coercion (Section 43) under the Sexual Offences Act. Therefore, enacting such legislation would duplicate the Sexual Offences Act and the Computer Misuse and Cybercrimes Act.
37. The Petitioners did not disclose the specific aspects of sextortion that the Sexual Offences Act and Section 37 of the Computer Misuse and Cybercrime Act, 2018 did not cover. Therefore, the Committee did not identify a gap in the existing law to necessitate the enactment of the proposed Bill.

**PART FIVE**

**5 COMMITTEE RECOMMENDATION**

38. Pursuant to the provisions of Standing Order 227, the Committee responds to the Petition as follows—


On the prayer that the Committee proposes amendments to the Sexual Offences Act, and other relevant criminal laws to define sextortion as an offence, make clear provision on penalties, support for victims and for connected purposes, the Committee notes that Sections 23,24 and 43 of the Sexual offences Act and Section 37 of the Computer Misuse and Cybercrime Act, 2018 provide for elements of the proposed offence of sextortion. The enactment of the Bill would duplicate the existing laws.

Therefore, the Committee rejects the proposal to amend the Sexual Offences Act (Cap. 63A) and other relevant criminal laws to explicitly define sextortion as an offence, make clear provisions on penalties, support for victims and for connected purposes;

Signed: 

Date: 23/09/25

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

 <b>THE NATIONAL ASSEMBLY</b> <b>PAPERS LAID</b>	
DATE: <b>23 SEP 2025</b>	DAY: <u>Tuesday</u>
TABLED BY:	<u>Hon Muchangi Karemba MP</u> <u>Chairperson</u>
CLERK-AT THE-TABLE:	<u>A. Shibus</u>

## ANNEXURES

- Annex 1: The Adoption List
- Annex 2: Public Petition No. 8 of 2024 regarding amendment to the Penal Code to provide for the offence of sextortion
- Annex 3: Minutes of the 50<sup>th</sup> Sitting of the Public Petitions Committee held on 10<sup>th</sup> September, 2024

**PUBLIC PETITIONS COMMITTEE**

**ADOPTION LIST**

(i) Consideration and adoption of the Report on Public Petition No. 8 of 2024 by Hon. Esther Passaris, MP, regarding amendment to the Penal Code to provide for the offence of sextortion  
**We, the undersigned, hereby affix our signatures to this Report to affirm our approval:**

DATE: 16/9/2025

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



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**

**MINUTES OF THE 30<sup>TH</sup> SITTING OF THE PUBLIC PETITIONS COMMITTEE  
HELD ON WEDNESDAY, SEPTEMBER 17, 2025, IN MASHUA CONFERENCE  
ROOM, SERENA BEACH RESORT AT 10.00 AM**

**PRESENT**

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

**APOLOGIES**

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

**SECRETARIAT**

1. Mr. Leonard Machira                      Principal Clerk Assistant II
2. Ms. Miriam Modo                          Clerk Assistant I
3. Ms. Anne Shibuko                          Clerk Assistant I
4. Mr. Bernard Toroitich                      Clerk Assistant III
5. Ms. Patricia Gichane                      Legal Counsel II
6. Ms. Nancy Akinyi                          Research Officer III
7. Ms. Roselyn Njuki                          Senior Serjeant at arms
8. Mr. Peter Mutethia                          Audio Officer
- 9.

**MIN./PPC/2025/162:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10:00 am. with the Prayer.

**MIN./PPC/2025/163:**

**ADOPTION OF AGENDA**

The Committee then adopted the agenda as listed hereunder on the proposal of Hon. Peter Irungu Kihungi, M.P, and seconded by Hon. Beatrice Kadeveresia Elachi, CBS, M.P.

**AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of P/No.8 of 2024 Regarding Penal Code to provide for the Offense of Sextortion**
6. Any Other Business
7. Adjournment

The Agenda was adopted to constitute business of the meeting having been proposed by Hon. Peter Irungu Kihungi, M.P. and seconded by Hon. Beatrice Kadeveresia Elachi, CBS, M.P.

**MIN./PPC/2025/164:**  
**PREVIOUS SITTINGS**

**CONFIRMATION OF MINUTES OF**

The Agenda was deferred.

**MIN./PPC/2025/165:**

**CONSIDERATION OF P/NO.8 OF 2024  
REGARDING PENAL CODE TO PROVIDE FOR  
THE OFFENSE OF SEXTORTION**

The Committee considered the draft report and noted as follows—

- I. Sextortion cannot be a law in itself. The Sexual Offences Act The law needs to be amended to make sextortion explicit.
- II. The Committee also noted the need to be more attentive on sextortion especially with the prevalence of Artificial Intelligence
- III. It was further noted that while the word “sextortion” is not explicitly captured in the law, the subject matter is addressed in various terminology.
- IV. The Committee argued that the aspects of sextortion are covered under the sexual offences Act defines sexual exploitation and covers coercion, abuse of power,
- V. Members argued that only publication of intimate images addressed by the Computer and Cyber Crime Act, but also coercion
- VI. The Committee noted that there is no specific gaps identified in current laws that would necessitate new standalone legislation

- VII. The Committee proposed rejection of proposal to explicitly criminalize sextortion as a distinct offence, recognizing existing legal provisions adequately cover abuse of power for sexual favors.

### **Committee Observations**

The Committee observed as follows—

- (i) The Petitioners defined sextortion as the abuse of power to coerce individuals into providing sexual favours.
- (ii) While sextortion is not expressly defined in the existing laws, the abuse of power to coerce individuals into providing sexual favours as defined by the petitioner, is provided for in the Sexual Offences Act, the Penal Code, and the Computer Misuse and Cybercrimes Act.
- (iii) Section 43(1)(a) of the Sexual Offences Act provides that an act is intentional and unlawful if it is committed in any coercive circumstance. Section 43(2) (c) provides that the coercive circumstances referred to in subsection (1)(a) include any circumstances where there is abuse of power or authority to the extent that the person in respect of whom an act is committed is inhibited from indicating his or her resistance to such an act, or his or her unwillingness to participate in such an act.
- (iv) Since sextortion, as defined by the petitioners, is the abuse of a person's power to give or withhold goods, services, or any other thing of value in exchange for sexual intercourse or other sexual activities, the aspects are adequately provided for in Section 43 of the Sexual Offences Act.
- (v) Further, the elements of sextortion can be construed with other offences, such as sexual harassment (Section 23), abuse of authority (Section 24), and coercion (Section 43) under the Sexual Offences Act. Therefore, enacting such legislation would duplicate the Sexual Offences Act, the Penal Code, and the Computer Misuse and Cybercrimes Act.
- (vi) The Petitioners did not disclose the specific aspects of sextortion that the Sexual Offences Act, the Penal Code and Section 37 of the Computer Misuse and Cybercrime Act, 2018 did not cover. Therefore, the Committee did not identify a gap in the existing law to necessitate the enactment of the proposed Bill.

### **Committee Recommendation**

On the prayer that the Committee proposes amendments to the Sexual Offences Act, and other relevant criminal laws to define sextortion as an offence, make clear provision on penalties, support for victims and for connected purposes, **the Committee notes that Sections 23,24 and 43 of the Sexual offences Act and Section 37 of the Computer Misuse and Cybercrime Act, 2018 provide for elements of the proposed offence of sextortion. The enactment of the Bill would duplicate the**

existing law. Therefore, the Committee rejects the proposal to amend the Sexual Offences Act (Cap. 63A).

**Adoption of the Report**

The Committee adopted the report having been proposed by Hon. (Eng.) Bernard Nebart Muriuki, M.P. and seconded by Hon. Edith Nyenze, M.P.

**MIN./PPC/2025/166:**

**ADJOURNMENT AND DATE OF NEXT MEETING**

The Chairperson adjourned the meeting at 01:00 p.m. The date of the next meeting will be held on Wednesday, 17<sup>th</sup> September 2025 at 02.00 p.m.



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

23/09/25

Date: .....



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**

**MINUTES OF THE 50<sup>TH</sup> SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, SEPTEMBER 10, 2024, IN CONFERENCE ROOM GARDEN SUITE 1&2, 6<sup>TH</sup> FLOOR, GARDEN INN HOTEL AT 2.30. P.M**

**PRESENT**

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

**APOLOGIES**

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

**IN ATTENDANCE**

**SECRETARIAT**

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

**PETITIONERS**

- |                             |                      |
|-----------------------------|----------------------|
| 1. Hon. Esther Passaris, MP | Petitioner           |
| 2. Mr. Lazarus Ougo         | Legal Officer        |
| 3. Ms. Sareen Malik         |                      |
| 4. Ms. Joan Kones           |                      |
| 5. Ms. Brenda               | Victim of Sextortion |

1. Mr. Benard Muchere Lead Petitioner
2. Mr. Joseph Wamiti
3. Mr. Antony Muchiri
4. Ms. Monica Aoko
5. Ms. Wahome Ngare

**MIN./PPETC/2024/314: PRELIMINARIES**

The Chairperson called the meeting to order at 2:30 pm. and proceedings began with prayers by Hon. John Walter Owino, M.P.

**MIN./PPETC/2024/315: ADOPTION OF AGENDA**

**AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of P/No.8 of 2024 regarding Amendment to the Penal Code to Provide for the Offense of Sextortion
  - *Meeting with the Petitioner (Hon. Esther Passaris, MP)*
6. Consideration of P/No. 78 of 2023 regarding National Health Insurance Fund Ineligible Incurred But Not Reported (IBNR) claims of over Kenya Shillings 21 billion, captured in the Financial Year ending 30<sup>th</sup> June 2022.
  - *Meeting with the Petitioner (Mr. Benard Muchere)*
7. Any Other Business
8. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Joshua Kandie, M.P. and seconded by Hon. Edith Nyenze, M.P.

**MIN./PPETC/2024/316: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

The agenda was deferred.

**MIN./PPETC/2024/317: CONSIDERATION OF P/NO.8 OF 2024 REGARDING AMENDMENT TO THE PENAL CODE TO PROVIDE FOR THE OFFENSE OF SEXTORTION**

**Meeting with the Petitioner (Hon. Esther Passaris, MP)**

The Hon. Esther Passaris appeared before the Committee and submitted as follows:

1. Sextortion is the abuse of power to coerce individuals into providing sexual favors, has become a pressing issue in the country, causing immense harm to victims and eroding trust in public and private institutions;
2. Demands for sex in exchange for essential resources, services and opportunities is both an infringement of human rights and a significant obstacle to achieving development goals predicated on gender equality, transparent and accountable governance;
3. The laws of Kenya do not specifically recognize or define sextortion as a form of sexual exploitation, harassment and corruption, thus hindering effective prosecution and victim protection;
4. Although Section 37 of the Computer Misuse and Cybercrime Act, 2018 addresses certain aspects related to sextortion, there remains a critical need to comprehensively address this issue within the broader legal context;
5. Sextortion disproportionately affects vulnerable women and girls due poverty, lack of education, political disenfranchisement, and various forms of disability, although men and boys are also susceptible;
6. The unchecked prevalence of sextortion not only inflicts immediate harm upon individuals but also undermines efforts to empower women and ensure their full and equal participation in society, thus impeding sustainable development;
7. Sextortion is a silent corruption with immense effects to majorly girls and women but it has not been criminalized. It involves coercion and not consent. For instance, sex for access to water which is common in informal settlement, sex for fish, sex for jobs, sex for grades, sex for police protection among others.
8. The laws do not recognize sextortion as a distinct entity within sexual exploitation and corruption hence hindering effective prosecution and victim protection. Therefore, the need to amend penal code that defines sextortion and make it an offence.
9. Sextortion was real and many perpetrators were getting away with it as there was no structure to deal with it. Therefore, the proposed law will protect the victims. However, there is a thin line between gender abuse and sextortion. In some cases, the victims just agree because they need the service.
10. Analysis and studies within informal settlements revealed that 41 per cent of women were victims of sextortion. Further, the rural areas in western Kenya has also experienced cases of sex for water. Various CBOs had managed to raise awareness on the matter through psychosocial centers.

### Prayers

11. The Petitioner prayed that the Committee:

relevant criminal laws to explicitly define sextortion as an offense, make clear provisions on penalties, support for victims and for connected purposes; and

- (ii) Makes any other recommendation necessary and appropriate in the circumstances of this petition to address the menace of sextortion to protect the rights and dignity of all citizens.

### Committee Concerns

1. The Petitioner clarified that the proposed law on sextortion would protect men from women offering themselves for sex by emphasizing that, in cases where a man is approached, he has the choice to refuse. The Petitioner added that seduction cannot occur without mutual consent, and therefore, sextortion is not a matter of seduction but rather extortion, where one is forced to offer their body in exchange for a service.
2. As for the proposed penalties, the Petitioner recommended a sentence of 15 years imprisonment, a fine of 5 million shillings, or both, to serve as a deterrent.
3. Addressing the gaps in the penal code and other laws that necessitated the proposed amendment, the Petitioner noted that while many laws require amendment, it is essential to begin by amending the penal code. Tackling sextortion was a deliberately demanding task.
4. Regarding the determination of when sextortion constitutes a crime, the Petitioner clarified that this would be decided by the courts. Investigations would establish whether the threshold for the crime is met, but first, a law defining and criminalizing sextortion is needed.

### Committee Resolution

After deliberations, the Committee resolved to receive submissions from relevant stakeholders on the Petition.

MIN./PPETC/2024/318:                    CONSIDERATION OF P/NO. 78 OF 2023 REGARDING NATIONAL HEALTH INSURANCE FUND INELIGIBLE INCURRED BUT NOT REPORTED (IBNR) CLAIMS OF OVER KENYA SHILLINGS 21 BILLION, CAPTURED IN THE FINANCIAL YEAR ENDING 30TH JUNE 2022.

### Meeting with the Petitioner (Mr. Benard Muchere)

The Petitioner, Mr. Benard Muchere appeared before the Committee and submitted as follows:

1. A fraud examination on financial statements in respect of the NHIF for the year ending 30<sup>th</sup> June 2022 with reference to previous financial years, established that:

2022, NHIF Management created IBNR claims aggregating to over Kshs21 billion backdated to the 2019/2020.

3. The unbudgeted claims were charged on NHIF members contribution schemes causing a huge financial crisis that made NHIF unable to pay hospital bills for genuine contributors.
4. The analysis relied upon the audited financial statements for the F/Y ending 30th June 2022 with reference to financial statements for financial years 2020/2021, 2019/2020, 2018/2019, and 2017/2018, Constitution of Kenya 2010, the National Health Insurance Fund Act, 2022, the Public Finance Management Act, 2012, and Cap 446-the State Corporations Act.
5. IBNR is a type of reserve account used in the insurance industry as the provision for claims and/or events that have transpired but have not yet been reported to an insurance company. IBNR is Used by insurance companies, particularly along the eastern Gulf Coast of the United States where Hurricanes and other natural disasters are common. After a storm hits, an actuary estimates potential damage to infrastructure and the claims that may be anticipated. Based on this analysis, money is then set aside in a reserve to pay for claims.
6. The process of incurring, reporting, and submissions of claims to NHIF for the previous manual system required that the patient presents an NHIF card and national identification card to a registered health facility and the contracted health facility provider requests for per-authorization by NHIF before treatment can be administered. It was only upon approval by NHIF that the contracted health facility provider undertakes services and immediately submits its claim.
7. For the Electronic Health Management Information System (EHMIS), the patient was required to present their national identification card and biometric taken by the registered health facility and the request for per-authorization and authorization is real-time. The claims are made in real-time through the EHMIS portal upon completion of services.
8. The NHIF's incurring, approval, and submission of claims' systems/processes are established in such a way that claims are reported before treatment, hence IBNR cannot arise in NHIF
9. Upon analysis of the 2021/2022 audited financial statements and the preceding financial years audited financial statements, the NHIF management appears to have engaged an actuarial firm during the preparation of the 2021/2022 financial statements., whereby it computed IBNR reserves aggregating to Kshs 21,109,205,434.00.
10. This was a major policy change, however, the Chief Executive Officer and the chairperson of the Board in their reports on the Annual Financial Statements for the FY ending June 2022 consciously avoided mentioning and explaining the basis for the IBNR claims.

Actuarial and Financial Services was procured and how it determined the so-called "claim-generating events". Therefore, the CEO's and Chairperson's noncommittal on IBNR claims suggest improbability.

12. The IBNR reserves were fraudulently created to enable siphoning of the Kshs 21,109,205,434 from the NHIF Funds as no reserves were set aside in the 2021/2022 financial year or the previous years.
13. Further, the audited financial statements for the financial year ended 30<sup>th</sup> June 2021 were fictitiously restated where part of the Kshs18,697,004,746 cumulative retained earnings, and Kshs12,310,791,402 was converted to IBNR claim reserves.

### Prayers

The Petitioner prayed that the Committee investigates and establishes:

14. Whether the Board of Management formulated and approved the ineligible IBNR claims as this was a major policy change;
15. The Cabinet Secretary/Ministry of Health approved the ineligible IBNR claims;
16. What were the so-called "claim-generating events" that elicited claims amounting to over Kshs 21 billion;
17. What were the correlation and differences between IBNR claims and claims payable under note 36 page 112 and note 38 page 113 of the Report and Financial Statements as of the financial year ending 30<sup>th</sup> June 2022 respectively, and whether the two claims amount to double claims;
18. Which health care providers benefited from IBNR and whether their IBNR claims were authentic;
19. In the event the IBNR claims are found inauthentic, the total amount paid should be recovered from the beneficiaries;
20. The capabilities of the Board of Management and the CEO for presenting 2021/2022 financial statement containing Kshs 21 billion ineligible IBNR claims in violation of Section 81(1), (2) and (3) of the Public Finance Management Act, 2012, section 14 of the state Corporation Act and section 38(1) of the NHIF Act, 2022 that require the board to prepare financial statements which give a true and fair view of the state of affairs;
21. The culpability of the Cabinet Secretary for Ministry of Health for approving the 2021/2022 financial statement containing Kshs 21 billion ineligible IBNR claims in violation of Section 81(5) and Section 88 of the Public Finance Management Act, 2012, sections 11&12 of the State Corporation Act and section 38(2) of the NHIF Act, 2022;
22. The culpability of the National Treasury for requiring the creation of ineligible IBNR claims amounting to Kshs 21 billion;

... regarding the Auditor General for professional negligence in failing to confirm whether NHIF funds were applied lawfully and effectively regarding the Kshs 21 billion IBNR claims as required by Article 229(6) of the Constitution.

### Committee Concerns

1. Regarding whether NHIF could pay IBNR claims under any provision, the Petitioner clarified that NHIF is a fund, not an insurance company, and is guided by the NHIF Act and other legal provisions as a state corporation, making it impossible to do so.
2. Concerning additional stakeholders in the matter, the Petitioner suggested that claimants who were paid could be considered as stakeholders in the issue.
3. On the possibility that NHIF set aside money in anticipation of claims, the Petitioner explained that the NHIF model includes an expiry period for claims to be serviced and allocates a budget for this purpose. However, it was unclear how such incidences could arise.
4. Regarding the events generating the claims, the Petitioner stated that if these claims were legitimate, they should have been reported in the insurance pact. Since this was not done, NHIF should explain how the payments were made.
5. As for the role of the actuary, the Petitioner indicated that an actuary should estimate the time before claims are made, after which the remaining balance is returned to the main account. However, this process applies to private insurance companies, not funds like NHIF.
6. Addressing whether other government agencies were aware of the alleged fraud, the Petitioner clarified that taking the issue to court, the DCI, or the Ministry of Health would have taken longer than addressing it through Parliament due to existing challenges in investigating anti-economic crimes in other government bodies.
7. Regarding individuals or departmental heads involved in the scheme, the Petitioner clarified that such financial statement fraud schemes are typically perpetrated at the level of finance officers, the Auditor General, the National Treasury, the Ministry of Health, and the Board, but not by junior officers.
8. Concerning the fate of the lost money and whether it was still in the IBNR reserve, the Petitioner clarified that the claim should have been paid from the reserve, which was created through book entries rather than liquid cash. These funds were allocated to respective contributory schemes such as Edu Afya and Linda Mama, among others. However, IBNR is not supposed to apply to NHIF, suggesting that it was created to siphon money from other schemes.
9. On whether other organizations engage in creative accounting, the Petitioner indicated that almost all state corporations were involved in similar schemes where cash and cash equivalents do not represent retained earnings.
10. Regarding whether the reserve account was common in Kenya, the Petitioner clarified that there was no IBNR account prior to FY 2021/2022. Additionally,

closes, but they were made a year later, leading to the siphoning of Kshs 4 billion through the crediting of the scheme.

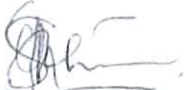
Committee Resolution

After deliberations, the Committee resolved to engage the Ministry of Health to respond to the matters raised.

MIN./PPETC/2024/319:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 6:00 p.m. The next meeting will be held on Wednesday, 11<sup>th</sup> September 2024 at 12:00 p.m.

Sign:  .....

*For* (CHAIRPERSON)

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



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT (THIRD SESSION)

**PUBLIC PETITION**

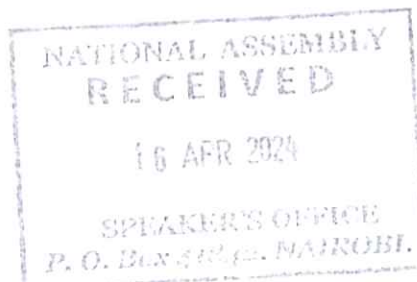
(No. 8 of 2024)

**REGARDING THE AMENDMENT OF THE PENAL CODE TO  
PROVIDE FOR THE OFFENSE OF SEXTORTION**

I, the **UNDERSIGNED**, on behalf of concerned citizens of Kenya;

**DRAW** the attention of the House to the following:

1. **THAT**, Article 119 of the Constitution affirms the right of every individual to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation;
2. **THAT**, sextortion, the abuse of power to coerce individuals into providing sexual favors, has become a pressing issue in the country, causing immense harm to victims and eroding trust in public and private institutions;
3. **THAT**, demands for sex in exchange for essential resources, services and opportunities is both an infringement of human rights and a significant obstacle to achieving development goals predicated on gender equality, transparent and accountable governance;
4. **THAT**, our laws do not specifically recognize or define sextortion as a form of sexual exploitation, harassment and corruption, thus hindering effective prosecution and victim protection;
5. **THAT**, although Section 37 of the Computer Misuse and Cybercrime Act, 2018 addresses certain aspects related to sextortion, there remains a critical need to comprehensively address this issue within the broader legal context;



*Hon. Speaker Sir,  
You may refer  
response  
16.4.24.*

*Approved  
SNA  
16/4/24*

**REGARDING THE AMENDMENT OF THE PENAL CODE TO  
PROVIDE FOR THE OFFENSE OF SEXTORTION**

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6. **THAT**, sextortion disproportionately affects vulnerable women and girls due poverty, lack of education, political disenfranchisement, and various forms of disability, although men and boys are also susceptible;
7. **THAT**, the unchecked prevalence of sextortion not only inflicts immediate harm upon individuals but also undermines efforts to empower women and ensure their full and equal participation in society, thus impeding sustainable development;
8. **THAT**, the issues in respect of which this Petition is made are not pending before any court of law or other constitutional or legal body.

**THEREFORE**, your humble petitioners pray that the National Assembly, through the Public Petitions Committee —

*i) propose amendments to the Penal Code, Sexual Offences Act, and other relevant criminal laws to explicitly define sextortion as an offense, make clear provisions on penalties, support for victims and for connected purposes; and*

*ii) take any other measures necessary and appropriate in the circumstances of this petition to address the menace of sextortion to protect the rights and dignity of all citizens.*

And your **PETITIONERS** will ever pray.

**PRESENTED BY:**



**THE HON. ESTHER PASSARIS, MP  
MEMBER FOR NAIROBI CITY COUNTY**

**DATE: .....16/4/24.....**

PUBLIC PETITION

BY SURVIVORS AND VICTIMS OF SEXTORTION IN THE WATER  
INDUSTRY AND OTHER SECTORS IN KENYA

NO	NAME OF PETITIONER	FULL ADDRESS	NATIONAL ID/ PASSPORT NO.	SIGNATURE/ THUMB EXPRESSION
	TRACI WANJIRO	MUKURU	34011463	
	VIVIATI MUMITA	MUKURU	14420841	
	Anastacia Wanjiru	MUKURU	26071404	
	Irene Kogendo	MUKURU	32575949	Irene
	MART WANJIRO	MUKURU	6419033	
	Kakhyanga Damatic Lutayi	MUKURU	30331799	
	SALOME ABISO	MUKURU	80839595	S
	Judith Sereti	MUKURU	26570078	
	Stafford Njiru	MUKURU	57000197	
	Jane Njiru	MUKURU	14653071	
	ALICE BARIRO	MUKURU	33617166	
	PHILIP MUTUKU	MUKURU	23266776	
	SUSAN MULLI	MUKURU	12767929	
	DORICE MASEI	MUKURU	22903662	
	Nekine Adhamba	MUKURU	25424710	NAA
	Rose vienda	MUKURU	26772695	

PUBLIC PETITION

BY SURVIVORS AND VICTIMS OF SEXTORTION IN THE WATER  
INDUSTRY AND OTHER SECTORS IN KENYA

NO	NAME OF PETITIONER	FULL ADDRESS	NATIONAL ID/ PASSPORT NO.	SIGNATURE/ THUMB EXPRESSION
17	ELIZABETH WATAA	0729570030	28380572	
18	SILVANA WATAA	0724070035	28380572	
19	MARY AKINGI	0717157927	28920942	
20	KEVIN CHUNDI	0725703350	27891113	
21	HAMISI SAID	0722574925	0768957	
22	MONICA WATAA	0791400713	B2552350	
23	SHARIS AKINGI	0702304793	251200513	
24	CHRISTINE NYIRIA	0718368539	26130144	
25	JOSEPHINE KAVESA	0723349651	21100660	
26	CATHERINE NDUNGE	0711058715	11539056	
27	ELIZABETH OJAN	0742100704	21822366	
28	Simon Barasa	0720579965	14603443	
	CYTHIA HUUZU	0706110145	35256688	

PUBLIC PETITION

BY SURVIVORS AND VICTIMS OF SEXTORTION IN THE WATER  
INDUSTRY AND OTHER SECTORS IN KENYA

NO	NAME OF PETITIONER	FULL ADDRESS	NATIONAL ID/ PASSPORT NO.	SIGNATURE/ THUMB EXPRESSION
1	ELIZABETH ATHRO	010468566	21535380	
2	Benedicta Muli	0791400701	24990372	
3	Jennifer Akinyi	0718807491	3465277	
4	ELIZABETH AKINHI	0723292602	35226647	
5	FREDRICK OTIENG	0724057746	26334913	
6	ODDHIAMED IRETE	0740133791	39761603	
7	NEBRA ALMA	0717844578	37030994	
8	AGNES DUYA	0726564678	25104709	
9	AGNES MURIGINGI	07103145784	20546420	
10	AMBROSIO MATHIAS	0727638050	27226164	
11	Immaculate Akinyi	0708993581	22503675	
12	Caroline Mathias	07062		
13	Alice Muriugi	0704446015	20074815	
14	Fredrick Muriugi	0707561642	21003107	
15	Amos Ochieng	0724470279	23104782	
16	AMBROSIO MATHIAS	0720362438	221044644	



THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

PUBLIC PETITIONS COMMITTEE

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LEGAL BRIEF:

PUBLIC PETITION (*NO. 8 OF 2024*),

BRIEF ON PETITION NO. 8 OF 2024 REGARDING THE AMENDMENT OF THE  
PENAL CODE TO PROVIDE FOR THE OFFENCE OF SEXTORTION

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June 2024

1. The petition, is brought before the House by Hon. Esther M. Passaris, Member of Parliament for Nairobi County on behalf of survivors and victims of sextortion in various sectors.
2. The petitioner draws the attention to the issue of sextortion, the abuse of power to coerce sexual favors, a present pressing issue in the country.
3. The petitioner claims that demand for sex in exchange for essential services is a significant obstacle to achieving development goals, gender equity, transparent and accountable governance.
4. The petitioner submits that section 37 of the Computer Misuse and Cyber Crimes Act addresses certain aspects of sextortion but there remains need to address the issue within the broader legal context.
5. The petitioner seeks the intervention of the House to—
  - i. Propose amendments to the Penal Code, Sexual Offences Act and other related criminal laws to explicitly define sextortion as an offence and to make clear provisions on penalties, support for victims and for connected purposes;
  - ii. Take any other measures necessary and appropriate in the circumstances of this petition to address the menace of sextortion to protect the rights and dignity of all citizens.

## ANALYSIS

6. Sextortion refers to a form of sexual exploitation or the practice of extorting money or sexual favors from someone by threatening to reveal evidence of their sexual activities, nude images or videos. The International Association of Women Judges defines sextortion as a form of abuse of power to obtain sexual benefit.
7. The United Nations Convention Against Corruption (UNCAC) 10th Conference of States Parties was held in December 2023, passed Resolution 10/10. The UN Resolution seeks to address the societal impact of Corruption focusing on gender and corruption.
8. In particular the 6<sup>th</sup> resolution encourages state parties to raise awareness that demanding sex or acts of a sexual nature within the context of the abuse of authority may be considered a particular form of corruption, and to close potential legislative gaps, as necessary, and

take further measures, as needed and appropriate, in order to prevent and prosecute such forms of corruption effectively.

**a. The Constitution**

9. Article 95(3) of the Constitution provides for the role of the National Assembly to enact legislation. Article 95 (2) of the Constitution mandates the National Assembly to deliberate and resolve the issues of concern to the people.

**b. The National Assembly Standing Orders**

10. Standing order 219 provides that a public petition may seek the House to consider any matter within its authority including the enacting, amending or repealing any legislation. If the Committee considers and approves the Petition, the approved content will be reduced to a legislative proposal sponsored by the Committee for consideration by the House.
11. Standing Order 114 A (1) (b) provides for the exemption from prepublication scrutiny of a proposal sponsored by the public petitions committee.

**c. Laws that regulate aspects of sextortion**

12. In Kenya the **Computer Misuse and Cyber Crimes Act** provides for offences relating to computer systems to ensure timely and effective detection, prohibition, prevention, investigation and prosecution of computer and cybercrimes.
13. The Act aims to protect the confidentiality and integrity of computer systems, promote Constitutional rights such as the right to privacy, freedom of expression and access to information and to facilitate international cooperation on cyber security.
14. The Act has extra-territorial jurisdiction, to the extent that victims of these attacks are Kenyan citizens or the crime was against property belonging to the government or compelling the government to do or refrain from doing any act.
15. The Act outlines several offences and penalties, some of the offences provided for include unauthorized access, unauthorized disclosure of password or access code, cyber espionage, **cyber harassment**, publication of false information, interception of electronic messages or money transfers, child pornography, **wrongful distribution of obscene or intimate images**, phishing, cyber terrorism, cybersquatting and identity theft.

***Section 27. Cyber Harassment***

*(1) A person who, individually or with other persons, wilfully communicates, either directly or indirectly, with another person or anyone known to that person, commits an offence, if they know or ought to know that their conduct —*

*(a) is likely to cause those persons apprehension or fear of violence to them or damage or loss on that persons' property; or*

*(b) detrimentally affects that person; or*

*(c) is in whole or part, of an indecent or grossly offensive nature and affects the person.*

*(2) A person who commits an offence under subsection (1) is liable, on conviction, to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding ten years, or to both.*

**37. Wrongful distribution of obscene or intimate images.**

*A person who transfers, publishes, or disseminates, including making a digital depiction available for distribution or downloading through a telecommunications network or through any other means of transferring data to a computer, the intimate or obscene image of another person commits an offence and is liable, on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years, or to both.*

16. The **Sexual Offences Act Cap. 63A** does not provide for the offence of Sextortion but provides for sexual harassment and sexual offences that relate to position of authority and persons in position of trust.

**23. Sexual harassment**

*(1) Any person, who being in a position of authority, or holding a public office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual harassment and shall be liable to imprisonment for a term of not less than three years or to a fine of not less than one hundred thousand shillings or to both.*

*(2) It shall be necessary to prove in a charge of sexual harassment that—*

- (a) the submission or rejection by the person to whom advances or requests are made is intended to be used as basis of employment or of a decision relevant to the career of the alleged victim or of a service due to a member of the public in the case of a public officer;
- (b) such advances or requests have the effect of interfering with the alleged victim's work or educational performance or creating an offensive working or learning environment for the alleged victim or denial of a service due to the member of the
- (c) public from a public office.

17. Section 24 provides for sexual offences that relate to position of authority and persons in position of trust, the Act refers to persons in authority or trust as law enforcement officers, superintendent of jail or remand homes, manager or staff of a hospital, head teachers or teachers or employees in primary or secondary schools and any person in a position of trust.

*24 (5) Any person who being in a position of trust takes advantage of his or her position and induces or seduces a person in their care to have sexual intercourse with him or her or commits any other offence under this Act, such sexual intercourse not amounting to the offence of rape or defilement, shall be guilty of an offence of abuse of position of trust and shall be liable upon conviction to imprisonment for a term of not less than ten years.*

18. The **Penal Code Cap. 63** does not provide for the offence of sextortion but provides for the offence of abuse of office.

*Section 101. Abuse of office*

*(1) Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another is guilty of a felony.*

*Section 102A. Penalties*

*A person convicted of an offence under sections 99, 100, 101 or 102 of this Part shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both.*

19. Sextortion is a form of online blackmail, whereby the perpetrator threatens to expose sexually intimate images of the victim online unless their demands are met. Typical

demands include sexual favors, more sexual images/videos (or acts on webcam) and money. Whilst sextortion generally involves some form of imagery, it can also involve threatening to release sexually explicit messages previously sent by or to the victim.

20. The Committee should seek the views of the petitioner and stakeholders to understand the need for the amendments on relevant laws for the offence of sextortion as a form of sexual exploitation and corruption. The petitioner's proposed legislation will define sextortion, the elements of the offence and the penalties of the offence.

### CONCLUSION

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

- a) the Petitioner;
- b) the Law Society of Kenya
- c) the Kenya National Human Rights and Equality Commission;
- d) the Ethics and Anti-Corruption Commission;
- e) the Attorney General; and
- f) the Kenya Law Reform Commission.

---

GICHANE PATRICIA  
LEGAL COUNSEL



## ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Jakaya Kikwete/Valley Road Junction) P.O. Box 61130 – 00200, NAIROBI, Kenya  
TEL.: 254 (020) 4997000, MOBILE: 0709 781000; 0730 997000  
EMAIL: [eacc@integrity.go.ke](mailto:eacc@integrity.go.ke) WEBSITE: [www.eacc.go.ke](http://www.eacc.go.ke)

When replying please quote:

**Our Ref:** EACC/LEG 8/6 VOL II

**Date:** 17<sup>th</sup> October, 2024

**Your Ref:** NA/DDC/JLAC/2024/071

**The Clerk of the National Assembly**  
Main Parliament Building  
P. O. Box 41842-00100  
**NAIROBI**

**Attn: Mr. Kipkemboi Arap Kirui**

Dear Sir,

**RE: SUBMISSIONS OF MEMORANDUM ON PUBLIC PETITION REGARDING AMENDMENT OF THE PENAL CODE TO PROVIDE FOR THE OFFENSE OF SEXTORTION**

We acknowledge receipt of your letter dated 30<sup>th</sup> September, 2024 with regard to the public petition regarding amendment on the Penal Code to provide for the offense of sextortion.

The Commission has prepared written submissions as per the attached Memorandum.

This letter therefore forwards to your office our Memorandum for your attention and kind consideration.

Yours faithfully,

**ABDULHAMID F. LOW, HSC  
DEPUTY DIRECTOR - ASSET TRACING  
FOR: SECRETARY/CHIEF EXECUTIVE OFFICER**

/skj



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*(3) Kachi  
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Low  
22/10/24*



MEMORANDUM BY THE ETHICS AND ANTI-CORRUPTION COMMISSION TO THE  
NATIONAL ASSEMBLY ON THE PUBLIC PETITION REGARDING AMENDMENT OF  
THE PENAL CODE TO PROVIDE FOR THE OFFENSE OF SEXTORTION

=====  
*Presented to the National Assembly*  
*on*  
*Tuesday*  
*18<sup>th</sup> October, 2024*  
=====

MEMORANDUM BY THE ETHICS AND ANTI-CORRUPTION COMMISSION TO THE NATIONAL ASSEMBLY ON THE PUBLIC PETITION REGARDING AMENDMENT OF THE PENAL CODE TO PROVIDE FOR THE OFFENSE OF SEXTORTION.

---

## INTRODUCTION

- A. The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under the Ethics and Anti-Corruption Commission Act, 2011. The Act was enacted pursuant to the requirement under Article 79 of the Constitution of Kenya, 2010.
- B. The mandate of the Commission is to combat corruption and economic crime in Kenya through law enforcement, prevention, public education and promotion of standards and practices of integrity, ethics and anti-corruption.
- C. The Commission also derives its statutory mandate from a number of other statutes namely, the Anti-Corruption and Economic Crimes Act, 2003, the Leadership and Integrity Act, 2012, the Public Officer Ethics Act, 2003 and the Bribery Act, 2016 among others.
- D. This is a memorandum to the National Assembly in relation to the public petition regarding amendment of the Penal Code to provide for the offense of sextortion.
- E. The memorandum is submitted pursuant to a written request by the Public Petitions Committee vide a letter Ref: KNA/DLPS/PPETC/CORR/2024/195 dated 30<sup>th</sup> September, 2024.

## MANDATE OF THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)

The Commission is established under section 3 of the Ethics and Anti-Corruption Commission Act, 2011 as read with Article 79 of the Constitution, as the Constitutional body mandated to combat and prevent corruption, and promote best practice and standards in ethics and integrity.

The mandate of the Commission is stipulated under Articles 79 and 252 of the Constitution, and further amplified under various statutes that operationalize Chapter Six of the Constitution. These are the statutes that provide the legal framework for the fight against corruption including the Ethics and Anti-Corruption Commission Act, 2011 (EACC Act), Leadership and Integrity Act, 2012 (LIA), Public Officer Ethics Act, 2003 (POEA), Anti-Corruption and Economic Crimes Act, 2003 (ACECA), and the Bribery Act, 2016.

The specific functions of the Commission as ensuing from the above Constitutional and statutory frameworks include:

- i. Investigations into corruption and economic crimes, and violations of codes of conduct, and making of recommendations to the Director of Public Prosecutions pursuant to section 11 of the EACC Act as read with section 35 of ACECA.
- ii. Recovery of corruptly acquired assets through investigations or Alternative Dispute Resolution under section 13(d) of the EACC Act as read with section 25A of ACECA, or civil proceedings for forfeiture of unexplained wealth in possession of state and public officers pursuant to section 55 of ACECA.
- iii. Oversight over responsible Commissions as they implement Kenya's wealth declaration system under part IV the Public Officer Ethics Act, 2003, pursuant to sections 4(2-5), 6(3) and 52(2) of LIA read together.
- iv. Enforcement of Chapter Six of the Constitution and other integrity provisions under POEA and LIA, pursuant to section 4(2) as read with Article 79 of the Constitution.
- v. Corruption prevention through systems reviews targeting public entities, public training, education and awareness, and promotion of ethics pursuant to section 11 of the EACC Act.

**PURPOSE OF THE PUBLIC PETITION REGARDING AMENDMENT OF THE PENAL CODE TO PROVIDE FOR THE OFFENSE OF SEXTORTION**

The public petition regarding amendment of the Penal Code to provide for the offense of sextortion seeks to facilitate the following:

- i. Propose amendments to the Penal code, Sexual Offences Act and other relevant criminal laws to explicitly define sextortion as an offense, make clear provisions on penalties, support for victims and for connected purposes; and
- ii. Take any other measures necessary and appropriate in the circumstances of this petition to address the menace of sextortion to protect the rights and dignity of all citizens.

**COMMENTS/OBSERVATIONS BY EACC ON THE PUBLIC PETITION REGARDING AMENDMENT OF THE PENAL CODE TO PROVIDE FOR THE OFFENSE OF SEXTORTION**

This Matrix sets out the observations and input by the Commission on the specific provisions in the public petition regarding amendment of the Penal Code to provide for the offense of Sextortion.

S/No.	Regulation / Subject Matter in the Public Petition regarding amendment of the Penal Code to provide for the offense of sextortion	Proposed amendment(s)/ Comment(s) Raised	Justification(s)/Rationale
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**PART A – COMMENTS ON THE PRAYERS SOUGHT IN THE PUBLIC PETITION REGARDING AMENDMENT OF THE PENAL CODE TO PROVIDE FOR THE OFFENSE OF SEXTORTION**

1.	<p><b>Recognition of Sextortion in the Anti-Corruption Legal Framework.</b></p>	<p><b>Justification</b></p>
	<p>We support the proposal to amend the Penal Code and Sexual Offences Act and other relevant criminal laws to explicitly define sextortion as a criminal offense.</p> <p>It is further our proposal to incorporate in Penal Code and the Sexual Offences Act and other relevant Criminal Laws including the Anti-Corruption Laws i.e The Leadership and Integrity Act, The Bribery Act and The Anti-Corruption and Economic Crimes Act an offence of Sextortion.</p>	<p>There is a gap in the Criminal Law as the Sextortion is not expressly criminalized as a form of sexual exploitation, harassment and corruption.</p> <p>It is notable that in other jurisdictions, sextortion is criminalized through the anti-corruption legal framework. e.g. Section 25 of the United Republic of Tanzania, The Prevention and Combating of Corruption Act, Cap 329.</p>

===== END =====



"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/1964 VOL.IV(48)

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



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

*DLPS*  
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.....20.....  
20<sup>th</sup> May 2025

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

*Ref: 1964-22*  
*Please process*  
*Asante*  
*3/6*

③ *Kadhi*  
*Please TMA*  
*to s/b*

ATT: Mr. Jeremiah W. Ndombi, MBS

Dear *Jeremiah,*

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

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

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

We thank you for your continued support and cooperation.

Yours *Sincerely*

PETER M. MUSYIMI, HSC  
AG. SECRETARY/CEO

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

MAY 2025

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



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## A. INTRODUCTION

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

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

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

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

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

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

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

## PART I-CRIMINAL LAW

### 1. THE OFFENSE OF SEXTORTION

#### (a) Defining Sextortion

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

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

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

## (b) Prevalence of Sextortion in Kenya

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

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

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

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

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

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

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

<sup>9</sup> Ibid

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

(d) Conclusion

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

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

(c) Legal Framework on Sextortion in Kenya

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

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

## 2. DECRIMINALISATION OF ATTEMPTED SUICIDE

### (a) Introduction

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

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

### (b) Analysis

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

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

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

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

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

#### (c) Conclusion

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

## B. PART II-REGULATION OF PROFESSIONALS

### 1. INTRODUCTION

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

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

- (a) What is a profession?

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

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

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

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

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

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

#### (b) The need to regulate professionals

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

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

#### (c) Approaches to regulation of professionals

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

##### (i) Statutory regulation of professionals

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

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

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

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

#### (ii) Self-regulation' or peer review model

The term 'self-regulation' is used to describe the disciplining of one's own conduct by oneself. Self-regulation as an approach to professional regulation is widely used in professions, sports<sup>10</sup>, the press, advertising and financial services. This model of regulation varies from the 'command and control' model of regulation exhibited by the former model to regulation by the market. It enshrines the principle that a practitioner's peers are in the best position to judge what constitutes professional and unprofessional conduct and enables professional bodies or associations to govern their members in a manner that ensures that they are not subject to undue influence from the State or other external pressures.

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

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

## 2. REGULATION OF ROBOTICS AND ARTIFICIAL INTELLIGENCE IN KENYA

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

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

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

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

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

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

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

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

### 3. REGULATION OF BANKING PROFESSIONALS IN KENYA

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

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

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

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

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

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

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

#### 4. REGULATION OF CREDIT PROFESSIONALS IN KENYA

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

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

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

e) Breach of privacy, humiliation and stressful relationship between the

borrowers and the lenders.

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

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

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

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

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

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

## 5. REGULATION OF GEOPHYSICS PROFESSIONALS IN KENYA

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

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

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

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

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

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

State regulation through an Act of Parliament would:

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

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

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

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

The proposed Geophysical Professionals Bill should:

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

### C. PART III-GENERAL

#### 1. LEGISLATION FOR THE DEVELOPMENT OF IRRIGATION INFRASTRUCTURE

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

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

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

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

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

(a) Analysis

*Overview of the Petitioner's Proposals*

The Petitioner proposes that—

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

*Constitutional and Institutional Issues Arising*

This proposal, while innovative, raises four critical issues:

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

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

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

#### (b) Considerations and Proposed Approach

##### *Policy Must Precede Legislation*

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

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

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

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

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

#### *Risks of Expanding the Road Maintenance Levy Fund*

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

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

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

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

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

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

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

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

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

#### Step 2: Develop a Dedicated Legislative Financing Framework

Following the revised policy, Parliament may consider legislation to:

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

#### A. Step 3: Institutional Collaboration through Intergovernmental Frameworks

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

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

#### (d) Conclusions and Recommendations

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

We therefore make the following recommendations:

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

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

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

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

### (a) The Concept of LGBTQ

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

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

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

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

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

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

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

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

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

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

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

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

The High Court held; -

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

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

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

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

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

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

### *Facts*

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

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

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

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

### *Issues*

The central issues of the case include:

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

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

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

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

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

In the end the Judges noted-

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

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

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

#### *Determination of the Supreme Court*

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

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

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

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

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

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

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

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

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

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

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

The said provision states –

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

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

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

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

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

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

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

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

#### D. CONCLUSION

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

28 MAY 2025



REPUBLIC OF KENYA  
OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

Our Ref: AG/LDD/237/1/97

21<sup>st</sup> May, 2025

Your Ref: KNA\DPLS\PPTEC\CORR\2025\09

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

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RE: REQUEST FOR WRITTEN SUBMISSIONS ON VARIOUS PUBLIC PETITIONS SUBMITTED TO THE NATIONAL ASSEMBLY - P/NO. 8/2024 REGARDING AMENDMENT OF THE PENAL CODE TO PROVIDE FOR THE OFFENCE OF SEXTORTION

We refer to your letter dated the 25<sup>th</sup> April 2025 and under Ref: KNA/DLPS/PPETC/CORR/2025/019 requesting this Office to make submissions on the petition regarding amendment of the Penal Code to provide for the offence of sextortion.

We have reviewed the Petition and the relevant legislation and our comments are set out below.

The Petitioner avers that sextortion, which is the abuse of power to coerce individuals into providing sexual favours, has caused immense harm to victims and eroded trust in public and private institutions. The Petitioner states that demands for sex in exchange for essential resources, services, and opportunities are both an infringement of human rights and an obstacle to achieving development goals predicated on gender equality, transparent and accountable governance. The Petitioner further avers that our laws do not specifically recognize or define sextortion as a form of sexual exploitation, harassment, and corruption, thus hindering effective prosecution and victim protection.

The Sexual Offences Act (Cap. 63A) provides for sexual offences, their definition, prevention, and the protection of all persons from harm from unlawful sexual acts. Sextortion is a sexual offence which amounts to intentionally demanding sexual intercourse or other sexual activities in exchange for goods, services, or any other thing of value in the demanding person's power to give or withhold.

The Sexual Offences Act provides for sexual offences that relate to abuse of position of power or authority. Section 23 of the Sexual Offences Act provides that any person

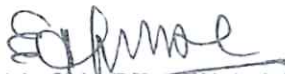
who, being in a position of authority or holding a public office, persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual harassment.

Further, Section 24 of the Sexual Offences Act provides that any person who, being in a position of authority or trust, takes advantage of his or her position and induces or seduces a person in their care or under their authority to have sexual intercourse commits an offence. The provision applies to people in positions of authority or trust including the superintendent or manager of a jail, remand home or children's or any institution or any other place of custody, law enforcement officer, manager of any hospital or staff of a hospital, head-teacher, teacher or employee in a primary or secondary school or special institution of learning and other persons in position of trust.

Section 43(1)(a) of the Sexual Offences Act provides that an act is intentional and unlawful if it is committed in any coercive circumstance. Section 43(2) (c) provides that the coercive circumstances referred to in subsection (1)(a) include any circumstances where there is abuse of power or authority to the extent that the person in respect of whom an act is committed is inhibited from indicating his or her resistance to such an act, or his or her unwillingness to participate in such an act. Since sextortion is the abuse of a person's power to give or withhold goods, services, or any other thing of value in exchange for sexual intercourse or other sexual activities, it amounts to an intentional and unlawful Act under Section 43 of the Sexual Offences Act.

In light of the foregoing, it is our considered view that the proposed offence of sextortion has similar elements as the offence of sexual harassment and the offence of sexual offences relating to position of authority and persons in a position of trust provided for under Sections 23 and 24 of the Sexual Offences Act. Further, the offence can be construed as an intentional and unlawful Act under Section 43 of the Sexual Offences Act.

We are therefore of the opinion that the amendment of the Penal Code and the Sexual Offences Act to provide for the offence of sextortion is not necessary because sexual offences relating to the abuse of a position of power or authority are provided for under Sections 23 and 24 of the Sexual Offences Act.



HON. SHADRACK J. MOSE, CBS  
SOLICITOR-GENERAL