Approved SNA 6/10/26

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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THE NATIONAL ASSEMBLY PAPERS LAID
DATE: 06 OCT 2026 DAY.
TABLED BY:
CLERK-AT THE-TABLE:

REPORT ON:

CONSIDERATION OF THE SEXUAL OFFENCES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 50 OF 2025)

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 06 OCT 2026 DAY. Tuesday
TABLED BY: Hon. Gedge Mwanyo MP Chairperson
CLERK-AT THE-TABLE: A. Shibuko

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SEPTEMBER 2026

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LIST OF ABBREVIATIONS AND ACRONYMS

AG	-	Office of the Attorney General and Department of Justice
CBS	-	Chief of the Order of the Burning Spear
EBS	-	Elder of the Order of the Burning Spear
EGH	-	Elder of the Order of the Golden Heart
FORD	-	Forum for the Restoration of Democracy
MCCP	-	Maendeleo Chap Chap Party
MP	-	Member of Parliament
ODM	-	Orange Democratic Movement
OGW	-	Order of the Grand Warrior
UDA	-	United Democratic Alliance
UDM	-	United Democratic Movement
WDM	-	Wiper Democratic Movement

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CHAIRPERSON'S FOREWORD

This Report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Sexual Offences (Amendment) Bill (National Assembly Bills No. 50 of 2025). The Bill was published in the Kenya Gazette Notice number (190) on 5th September 2025, and was read a First Time in the House on 11th February, 2026. Pursuant to Standing Order 127, the Bill was committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House.

The Bill seeks to amend the Sexual Offences Act (Cap. 63A) to strengthen the legal framework governing the prosecution of sexual offences in Kenya. The Bill seeks to ensure that offences specified under the Sexual Offences Act are adjudicated exclusively through formal judicial processes.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on 13th February 2026, inviting the public to submit memoranda in the form of written statements on the Bill. The memoranda were to be received on or before Friday, 27th February 2026, at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received one (1) memoranda.

The Women Empower and Mentor All Organization & Ms. Nduta Muthua gave their views on the Bill which the Committee considered in the preparation of this Report.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank all stakeholders and members of the public who submitted their views on the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who sat for long hours and made useful contributions towards the preparation and production of this Report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the Sexual Offences (Amendment) Bill *(National Assembly Bills No. 50 of 2025)*.

It is my pleasure to report that the Committee has considered the Sexual Offences (Amendment) Bill (National Assembly Bills No. 50 of 2025) and has the honour to report back to the National Assembly with the recommendation that the **House approves the Bill with an amendment.**

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

CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
    i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
    ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
    iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
    iv. *To study and review all legislation referred to it;*
    v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
    vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
    vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
    viii. *To examine treaties, agreements and conventions;*
    ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
    x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
    xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

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

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

1.3 Committee Membership

4. The Committee comprises the following Members:

Chairperson
Hon. Murugara George Gitonga, CBS, MP
Tharaka Constituency
UDA Party

Vice-Chairperson
Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Hon. Gladys Boss, MGH, MP
Uasin Gishu Constituency
UDA Party

Hon. Maalim Farah, EGH, MP
Dadaab Constituency
WDM-Kenya

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

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

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

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

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

Hon. Timothy Kipchumba Toroitich, MP.
Marakwet West Constituency
Independent

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

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

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

Hon. Harold Kimuge Kipchumba, MP
Nominated Member
ODM Party

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

1.4 Committee Secretariat

5. The Committee is facilitated by the following staff:

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

Mr. Ronald Walala
Principal Legal Counsel II

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Samuel Wanjiru
Clerk Assistant III

Mr. Omar Abdirahim
Fiscal Analyst I

Mr. Isaac Nabiswa
Legal Counsel I

Ms. Vivienne Ogega
Research Officer III

Mr. John Nduaci
Serjeant-At-Arms

Ms. Rahab Chepkilin
Audio Officer III

Ms. Esther Mbatha
Public Communications Officer III

Mr. Wilson Murimi
Media Relations Officer III

Ms. Rhoda Muchiri
Hansard Officer III

CHAPTER TWO

2 OVERVIEW OF THE SEXUAL OFFENCES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 50 OF 2025)

2.1 Background

6. The Bill, sponsored by Hon. Amina Udgoon, MP, was read a First Time in the House on 11th February 2026 (Annexure 3). It was thereafter committed to the Committee in line with Standing Order 127(1) of the National Assembly Standing Orders.

2.2 Summary of Legal Provisions

7. The Bill seeks to seeks to ensure that offences specified under the Sexual Offences Act are adjudicated exclusively through formal judicial processes by amending Sexual Offences Act (CAP 63A). Further the Bill provides that where any process purporting to dispose of sexual offences outside the formal judicial process is used, the process shall be void and have no legal effect.

8. In particular:
   a) Amending the Sexual Offences Act, by inserting the following new section immediately after section 40:
      i. "40A (1) Notwithstanding any other written law, the offences specified under this Act shall be prosecuted exclusively through the judicial system.
      ii. (2) Any agreement, settlement, or process purporting to dispose of offences under this Act outside the formal judicial process shall be void and no legal effect.

   b) In line with Article 159 (3) of the Constitution, this amendment proposes to safeguard the rights of victims from processes that are repugnant to justice and morality, and ensure that justice is administered in a manner consistent with the Constitution.

   c) The Bill does not contain any provisions limiting any fundamental rights and freedoms.

   d) The Bill does not concern the County Governments in terms of Article 110(l)(a) of the Constitution.

   e) The enactment of this Bill may not occasion additional expenditure of public funds.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

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

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

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

"(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism including-

(a) inviting submission of memoranda;

(b) holding public hearings;

(c) consulting relevant stakeholders in a sector; and

(d) consulting experts on technical subjects.

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

3.2 Memoranda Received on the Bill

11. Pursuant to the aforementioned provisions of the law, the Committee placed an advertisement in the print media on 2th February 2026 *(Annexure 4)* inviting the public to submit memoranda by way of written statements on the Bill.

12. To this end, the Committee received two (2) memoranda from the Women Empower and Mentor All Organization and Ms. Nduta Muthua. The memoranda is annexed to this Report as *(Annexure 5)*.

3.2.1 Submissions in support of the Bill

13. **Ms. Nduta Muthua** supported the Bill, that broadening section 40A in this manner would strengthen the Bill's objective while preserving legitimate legal, medical, psychosocial, civil compensation and other support available to victims and survivors.

14. **Ms. Nduta Muthua** emphasized that victims who are children, elderly, or living with disabilities are highly susceptible to coercion, intimidation, or manipulation by relatives and caregivers, making total structural protection vital.

15. **Ms. Nduta Muthua** noted that the bill successfully balances this strict prosecution framework while safely preserving the victim's right to pursue independent legal advice, medical or psychosocial support and separate civil damages.

3.2.2 Submissions on Proposed Amendments

16. Whilst proposing amendments to the Bill, the Women Empower and Mentor All Organization submitted as follows:

Clause 40A (1)

17. The Women Empower and Mentor All Organization proposed an amendment to explicitly include compliance with Article 27 of the Constitution and safeguard against discriminatory barriers and ensure inclusive survivor protection.

Clause 40A (1) (a)

18. The Women Empower and Mentor All Organization proposed to insert a new subsection to shield complainants from identity-based targeting and to combat family obstruction and prevent bad-faith counter-charges or arrests targeting gender non-conforming survivors.

Clause 40A (2)

19. The Women Empower and Mentor All Organization proposed to revise this clause to explicitly invalidate forced or pressured withdrawals to eliminate informal out-of-court settlements driven by family-mediated pressure and intimidation.

Clause 40A (3)

20. The Women Empower and Mentor All Organization proposed to insert a new section establishing bias-motivated hostility as an aggravating factor to penalize structural hostility and intimate partner control based on a survivor's identity.

Clause 40A (4) (a)

21. The Women Empower and Mentor All Organization proposed to insert two new provisions addressing digital realities and evidence to protect survivor anonymity against online harassment and legally recognize digital evidence.

Clause 40A (5)

22. The Women Empower and Mentor All Organization proposed to Insert a new timeline restriction for case disposal to reduce case backlogs, limit witness fatigue, and minimize re-traumatization caused by court delays.

Committee Observation

23. In line with Article 159 (3) of the Constitution, the Bill proposes to safeguard the rights of victims from processes that are repugnant to justice and morality, and ensure that justice is administered in a manner consistent with the Constitution.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

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

    1) Despite the existence of a robust legal framework to curb sexual offences, some of these offences are resolved using Alternative Dispute Resolution (ADR) mechanisms such as traditional dispute resolution mechanisms. This has occasioned injustice to the victims of sexual offences especially minors.

    2) Article 159 (2) speaks to alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. Criminal offences are not disputes as envisaged under Article 159. The provision is therefore necessary for the avoidance of doubt.

    3) Article 159 (3) provides that traditional dispute resolution mechanisms shall not be used in a way that is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality.

25. In light of the foregoing, the Committee resolved to recommend to the House to approve the Bill.

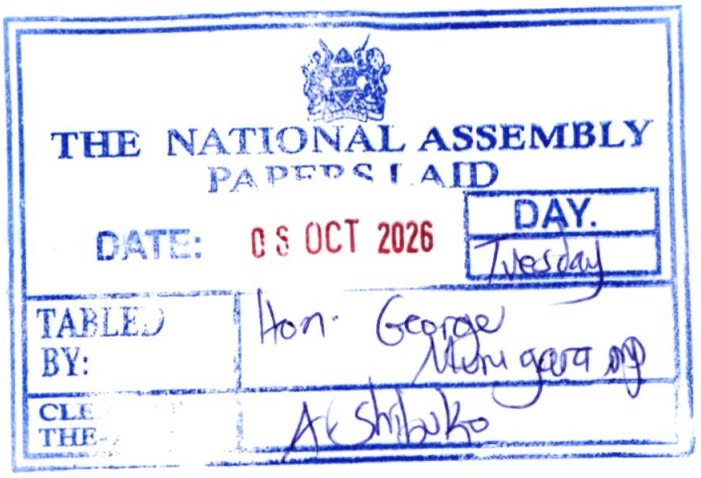
CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

26. The Committee, having considered the Sexual Offences (Amendment) Bill (National Assembly Bills No. 50 of 2025) and the submissions from members of the public and stakeholders, recommends that the House **approves the Bill with an amendment** contained in the Schedule of Amendments forming Chapter Six of this Report.

SIGNED.....DATE.....1/10/2026

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



CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

27. In view of the observations made, the Committee proposed the following amendment to the Bill:

CLAUSE

THAT Clause 2 of the Bill be amended by inserting the word "have" immediately after the words "void and" in subsection (2) of the new section 40A.

Justification: To correct a grammatical error.

Annexure 1

Adoption Schedule

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
13TH PARLIAMENT – 5TH SESSION-2026

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ADOPTION OF THE COMMITTEE REPORT ON ITS CONSIDERATION OF THE SEXUAL OFFENCES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 50 OF 2025).

We, the Members of the Departmental Committee on Justice and Legal Affairs have, pursuant to Standing Order 199, adopted this Report of the Committee on its Consideration of the Sexual Offences (Amendment) Bill (National Assembly Bills No. 50 of 2025), sponsored by the Hon. Amina Udgoon Siyad Kuno, MP and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson .....
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chair .....
3. Hon. Gladys Boss, MGH, MP .....
4. Hon. Farah Maalim, EGH, MP .....
5. Hon. Silvanus Osoro Onyiego, CBS, MP .....
6. Hon. Tom Joseph Francis Kajwang', CBS, MP .....
7. Hon. Timothy Wanyonyi Wetangula, CBS, MP .....
8. Hon. (Dr.) Otiende Amollo, SC, EBS, MP .....
9. Hon. Michael Mwangi Muchira, MP .....
10. Hon. Aden Daud, EBS, MP .....
11. Hon. John Okwisia Makali, MP .....
12. Hon. Stephen M. Mogaka, MP .....
13. Hon. Timothy Kipchumba Toroitich, MP .....
14. Hon. Harold Kimuge Kipchumba, MP .....
15. Hon. CPA Suleka Hulbale Harun, MP .....

Annexure 2

Minutes

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

MINUTES OF THE 53RD SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS, HELD AT THE COMMITTEE ROOM 12, SECOND FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS ON THURSDAY, 1ST OCTOBER 2026 AT 10:00 A.M.

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chairperson
3. Hon. Maalim Farah, EGH, MP
4. Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP
5. Hon. Aden Daud, EBS, MP
6. Hon. Muchira Michael Mwangi, MP - *virtually*
7. Hon. Makali John Okwisia, MP
8. Hon. Mogaka Stephen M. MP- *virtually*
9. Hon. Harold Kimuge, MP
10. Hon. Toroitich Timothy Kipchumba, MP

ABSENT WITH APOLOGIES

1. Hon. Gladys Boss, MGH, MP
2. Hon. Onyiego Silvanus Osoro, CBS, MP
3. Hon. Francis Kajwang' Tom Joseph, CBS, MP
4. Hon. Timothy Wanyonyi Wetangula, MP
5. Hon. CPA Sulekha Hulbale Harun, MP

SECRETARIAT

1. Mr. Ahmed Salim - Clerk Assistant I/ Head of the Secretariat
2. Mr. Ronald Walala - Principal Legal Counsel
3. Mr. Samuel Wanjiru - Clerk Assistant III
4. Ms. Fatuma Ramadhan - Hansard Officer III
5. Mr. Isaac Nabiswa - Legal Counsel I
6. Ms. Rahab Chepkilim - Audio Officer
7. Ms. Mary Stacy - Intern

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Adoption of the Report on the Sexual Offences (Amendment) Bill (National Assembly Bill No. 50 of 2025), sponsored by Hon. Amina Udgoon Siyad Kuno, MP
5. Legal briefing on the following Bills:
    i. The Constitution of Kenya (Amendment) (No.2) Bill, 2025 (National Assembly Bill No. 29 of 2025) sponsored by Hon. Gladys Boss, MP, the Hon. Beatrice Elachi, MP and the Hon. Jane Kagiri MP
    ii. Statutory Instruments (Amendment) Bill (Senate Bill No. 10 of 2024) sponsored by the Senate Majority Leader and Senate Minority Leader.

iii. Heraldry Bill (National Assembly Bill No. 45 of 2026) sponsored by the Leader of Majority Party.

6. Consideration of the Committee Stage Amendments to the Elections (Amendment) (No.2) Bill (Senate Bill No. 29 of 2024) (Including proposals by the Independent Electoral and Boundaries Commission (IEBC))
7. Consideration of the proposed amendment to the Consumer Protection Act (Cap. 501) by the National Assembly's Public Petitions Committee to codify the *in duplum rule.*
8. Any Other Business
9. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/244/2026: PRELIMINARIES

The Meeting was called to order at twenty-three minutes past ten o'clock with a Prayer by the Chairperson. The agenda of the Sitting was adopted, having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Harold Kimuge, MP.

MIN. NO. DDC/JLAC/245/2026: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 51st Sitting held on 26th August 2026 were adopted as a true reflection of the proceedings, having been proposed by Hon. Toroitich Timothy Kipchumba, MP and seconded by Hon. Harold Kimuge, MP.

Minutes of the 52nd Sitting held on 29th September 2026 were adopted as a true reflection of the proceedings, having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Aden Daud, EBS, MP.

MIN. NO. DDC/JLAC/246/2026: ADOPTION OF THE REPORT ON THE SEXUAL OFFENCES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 50 OF 2025) BY HON. AMINA UDGOON SIYAD KUNO, MP

The Members, having considered the Sexual Offences (Amendment) Bill (National Assembly Bills No. 50 of 2025) and the submissions from members of the public and stakeholders, recommended that the House approve the Bill with an amendment contained in the Schedule of Amendments forming Chapter Six of the Report.

The Report on the Sexual Offences (Amendment) Bill (National Assembly Bills No. 50 of 2025), sponsored by the Hon. Amina Udgoon Siyad Kuno, MP, was adopted, having been proposed by Hon. Aden Daud, EBS, MP and seconded by Hon. Makali John Okwisia, MP.

MIN. NO. DDC/JLAC/247/2026: LEGAL BRIEFING ON BILLS

The Legal Counsel briefed the Members on the Bills as follows:

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

a) The Bill seeks to the Constitution to ensure that the membership of the National Assembly and the Senate conforms to the principle provided for in Article 81(b) of the Constitution which provides that not more than two-thirds of members of elective bodies shall be of the same gender.
b) The Bill proposes the creation of special seats necessary to ensure that no more than two-thirds of the members elected are of the same gender. The number of seats shall

be determined after the declaration of the results of a general election and the members contemplated shall be nominated by political parties on the basis of proportional representation by use of party lists.

c) Further, the Bill provides for a sunset provision of twenty years with an option for extension for a further ten years.

The session noted that the provisions are similar the provisions of Article 177(1)(b) which creates special seat members necessary to ensure that no more than two-thirds of the membership of the county assembly are of the same gender.

The creation of gender-top up seats through party lists may guarantee the attainment of the two-thirds gender principle. However, there is need to strike a balance between the cost of representation and the realization of the two-thirds gender principle.

The Statutory Instruments (Amendment) Bill, 2024 (Senate Bill No. 10 of 2024), sponsored by Senate Majority Leader and Senate Minority Leader.

a) The Bill seeks to amend the Statutory Instruments Act (Cap. 2A) to provide for timelines within which a statutory instrument is to be made and the power to petition Parliament if the regulation-making authority fails to make a statutory instrument within the specified time.

b) The new section 24A provides that a regulation-making authority shall make a statutory instrument within the period provided under the enabling legislation and if the enabling legislation does not provide for an express timeline, the regulation-making authority shall make the statutory instrument within twelve months from the date of commencement of the enabling legislation. It also creates the offence of failure to make the statutory instrument within the specified timeline.

c) The new section 24B grants a person the power to petition Parliament if a regulation-making authority fails to make the statutory instrument within the specified time and where Parliament allows the petition, the regulation-making authority shall implement the recommendations within sixty days.

Article 94(5) of the Constitution states that no person or body, other than Parliament, has the power to make provisions having the force of law except under authority conferred by the Constitution or legislation. Delegation is therefore necessary because Parliament cannot practically legislate every technical or administrative detail.

Failure to make regulations is essentially an administrative omission hence making it a criminal offence may be disproportionate where other remedies are available.

Heraldry Bill (National Assembly Bill No. 45 of 2026) by the Leader of Majority Party

a) The Bill seeks to establish a modern statutory framework for the regulation and protection of heraldic representations in Kenya.

b) The Bill seeks to:

   i. establish the College of Arms as the institutional framework responsible for administering heraldry in Kenya;

   ii. regulate the registration of heraldic representations and grant of arms including applications, withdrawal, cancellation and suspension;

   iii. establish a register of arms to provide an authoritative record of registered heraldic representations;

   iv. offer protection against misuse of arms and heraldic representations, including creating offences relating to misuse and false entries in the register;

v. replace the existing College of Arms Act, Cap. 98, while preserving the necessary continuity of the existing institutional framework.

The Bill seeks to modernise Kenya's legal framework on heraldry by replacing the existing framework under the College of Arms Act with a comprehensive system for the grant, registration, regulation and protection of Arms and heraldic representations.

The Committee resolved to schedule meetings with stakeholders to consider the Bills.

MIN. NO. DDC/JLAC/248/2026: **CONSIDERATION OF THE COMMITTEE STAGE AMENDMENTS TO THE ELECTIONS (AMENDMENT) (NO.2) BILL (SENATE BILL NO. 29 OF 2024)**

The Committee resolved to propose amendments to the Bill, during the Committee of the Whole House, as deliberated on during its Sitting held on Tuesday, 29th September 2026.

MIN. NO. DDC/JLAC/249/2026: **CONSIDERATION OF THE PROPOSED AMENDMENT TO THE CONSUMER PROTECTION ACT (CAP. 501) BY THE NATIONAL ASSEMBLY'S PUBLIC PETITIONS COMMITTEE TO CODIFY THE IN DUPLUM RULE.**

Members were briefed on the proposed Consumer Protection (Amendment) Bill, 2026.

The principal object of this Bill is to amend the Consumer Protection Act, Cap. 501 to provide for the *in duplum rule* to make it universally applicable to all credit providers and agreements in Kenya.

The *in duplum rule* dictates that interest on a debt must stop running when the total accrued interest equals the unpaid principal amount.

The Meeting noted that the proposal would be submitted to the office of the Honourable Speaker for publication.

MIN. NO. DDC/JLAC/250/2026: **ADJOURNMENT**

The meeting was adjourned at twelve minutes to twelve o'clock. Next meeting to be held on Tuesday, 6th October 2026 at 10:00 am.

SIGNED: .....**DATE:** 01/10/2026

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

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

MINUTES OF THE 52ND SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS, HELD AT THE COMMITTEE ROOM 17, THIRD FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS ON TUESDAY, 29TH SEPTEMBER 2026 AT 10:00 A.M.

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chairperson – *virtually*
3. Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP
4. Hon. Aden Daud, EBS, MP
5. Hon. Muchira Michael Mwangi, MP
6. Hon. Makali John Okwisia, MP
7. Hon. Mogaka Stephen M. MP
8. Hon. Harold Kimuge, MP - *virtually*
9. Hon. CPA Sulekha Hulbale Harun, MP - *virtually*

ABSENT WITH APOLOGIES

1. Hon. Gladys Boss, MGH, MP
2. Hon. Maalim Farah, EGH, MP
3. Hon. Onyiego Silvanus Osoro, CBS, MP
4. Hon. Francis Kajwang' Tom Joseph, CBS, MP
5. Hon. Timothy Wanyonyi Wetangula, MP
6. Hon. Toroitich Timothy Kipchumba, MP

SECRETARIAT

1. Mr. Ahmed Salim - Clerk Assistant I/ Head of the Secretariat
2. Mr. Ronald Walala - Principal Legal Counsel
3. Mr. Samuel Wanjiru - Clerk Assistant III
4. Mr. Abdikafar Abdi - Clerk Assistant III
5. Ms. Fatuma Ramadhan - Hansard Officer III
6. Mr. Isaac Nabiswa - Legal Counsel I
7. Ms. Danton Kimutai - Audio Officer
8. Ms. Mary Stacy - Intern

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Consideration and calendar planning for Business before the Committee
5. Consideration and adoption of the draft report on the Sexual Offences (Amendment) Bill (National Assembly Bill No. 50 of 2025) by Hon. Amina Udgoon Siyad Kuno, MP
6. Legal briefing on Committee of the Whole House Amendments to the Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024)
7. Any Other Business
8. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/238/2026: PRELIMINARIES

The Meeting was called to order at twenty minutes past ten o'clock with a Prayer by the Chairperson. The agenda of the Sitting was adopted, having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Aden Daud, EBS, MP.

MIN. NO. DDC/JLAC/239/2026: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

This agenda was deferred.

MIN. NO. DDC/JLAC/240/2026: CONSIDERATION AND CALENDAR PLANNING FOR BUSINESS BEFORE THE COMMITTEE

The Members considered the Business and other matters before the Committee as follows—

Regarding Bills, the Committee noted and resolved as follows:

i. The County Boundaries Bill (Senate Bill No. 6 of 2023) by Sen. Moses Kajwang', MP -The *Committee, having resolved to suspend the consideration of the Bill on the advice of the Attorney General, to write to the Honourable Speaker to formally notify him of the Resolution.*

ii. The Sexual Offences (Amendment) Bill (National Assembly Bill No. 50 of 2025) by Hon. Amina Udgoon Siyad Kuno, MP - *Committee to consider the draft report.*

iii. The County Governments Election Laws (Amendment) Bill (Senate Bill No. 2 of 2024) by Senator Crystal Asige, M.P. - *Committee to schedule a meeting with stakeholders.*

iv. The Certified Governance Secretaries Bill (National Assembly Bill No. 17 of 2026) by the Leader of Majority Party - *Arising from the stakeholders engagement on the Bill on Thursday, 13th August 2026 and noting the concerns and submissions made by the State Corporations Advisory Committee on whether the institute should be a State Corporation, and whether bestowing the institute with both the regulatory responsibilities and those on membership welfare could create conflict, the Committee had advised the National Treasury, Institute of Certified Secretaries and State Corporations Advisory Committee to have a joint sitting and submit a joint memorandum consolidating all the proposed amendments. The Joint Memorandum has been submitted and the Committee resolved to consider the same during the week commencing on 5th October 2026.*

v. The Constitution of Kenya (Amendment) (No.2) Bill, 2025 (National Assembly Bill No. 29 of 2025) by Hon. Gladys Boss, MP, the Hon. Beatrice Elachi, MP and the Hon. Jane Kagiri MP- *Advert calling for the public to submit views on the Bill published on 4th August 2026, deadline being 2nd November 2026. Legal briefing on the Bill set for Thursday, 1st October 2026.*

vi. Statutory Instruments (Amendment) Bill (Senate Bill No. 10 of 2024) is a Bill sponsored by the Senate Majority Leader and Senate Minority Leader - *Advert calling for the public to submit views on the Bill published on 18th August 2026, deadline being Monday, 31st August 2026. Legal Briefing on the Bill set for Thursday, 1st October 2026. Committee to schedule a meeting with stakeholders thereafter.*

vii. *Heraldry Bill (National Assembly Bill No. 45 of 2026) by the Leader of Majority Party - Advert calling for the public to submit views on the Bill published on 2nd September 2026, deadline being Wednesday, 16th September 2026. Legal Briefing on the Bill set for Thursday, 1st October 2026. Committee to schedule a meeting with stakeholders thereafter.*

On Quarterly Reports on Budget Implementation pursuant to (S.O. 216(5) (ba) the Committee noted and resolved to:

i. Consider and adopt report on Budget Implementation for the Financial Year 2024/2025 for the Spending Agencies under its Purview during the week commencing on 5th October 2026; and

ii. Undertake a retreat with the agencies under its purview, in Mombasa from 26th to 31st October 2026, to scrutinize the status of Budget Implementation for the Financial Year 2025/2026.

On Mediation on Election Offences (Amendments) (No. 2) Bill (Senate Bill No.28 of 2024, the Mediation Committee to schedule a meeting to consider the Bill, date to be determined after further consultations.

Regarding the Sessional Papers, the Committee is set to consider them as follows:

i. Sessional Paper No. 3 of 2023 on the Kenya Policy on Public Participation from Office of the Attorney-General and Department of Justice - *Committee to consider the draft report on the Sessional Paper during the week commencing on 5th October 2026.*

ii. Sessional Paper No. 3 of 2024 on the Power of Mercy Policy from Office of the Attorney-General and Department of Justice - *Committee to meet stakeholders during the upcoming retreat on Budget Implementation in Mombasa, scheduled for 26th to 31st October 2026.*

iii. Sessional Paper No. 4 of 2024 on Alternative Dispute Resolution Policy from Office of the Attorney-General and Department of Justice- *Committee to meet stakeholders during the upcoming retreat on Budget Implementation in Mombasa, scheduled for 26th - to 31st October 2026.*

Regarding other matters, the Committee resolved as follows:

i. On consideration of the proposed Election Laws (Amendment) Bill 2026 by the Independent Electoral and Boundaries Commission (IEBC), and as submitted by the IEBC vide a letter dated 13th July 2026, the Committee resolved to consider the amendments under the Elections (Amendment) (No.2) Bill (Senate Bill No. 29 of 2024). In this regard, the Committee to incorporate the necessary amendments into the Elections (Amendment) (No.2) Bill (Senate Bill No. 29 of 2024) because it will save time as opposed to publishing a separate Bill afresh.

ii. On the proposed amendments to the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), Cap. 59A by the Assets Recovery Agency (ARA), the Committee to schedule a briefing meeting during the week commencing on 5th October 2026 and resolve on the way forward.

iii. On the proposed amendments to the Political Parties Act (Cap. 7D) by the Office of the Registrar of Political Parties (ORPP), the Committee resolved to undertake further engagement with the ORRP during the upcoming retreat on Budget Implementation.

iv. Regarding the proposed amendment to the Consumer Protection Act (Cap. 501) by the National Assembly's Public Petitions Committee to formally codify the *in duplum rule*, the Committee is set to consider the amendment on 1st October 2026 before submitting a request for approval for publication to the Honourable Speaker.

v. On the request to expedite the publication of the proposed National Coroners Service (Amendment) Bill, 2026 by the Principal Secretary, the State Department for Parliamentary Affairs (SDPA), the Meeting noted the Bill had been submitted to the Government Press for publication.

MIN. NO. DDC/JLAC/241/2026: **CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE SEXUAL OFFENCES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 50 OF 2025) BY HON. AMINA UDGOON SIYAD KUNO, MP**

Members were guided through the draft report on the Bill and upon reviewing the Bill and the submissions received, the Committee made the following observations:

i. Article 159 (2) speaks to alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. Criminal offences are not disputes as envisaged under Article 159. The provision is therefore necessary for the avoidance of doubt.

ii. Article 159 (3) provides that traditional dispute resolution mechanisms shall not be used in a way that is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality.

In light of the foregoing, the Committee resolved to recommend to the House to approve the Bill. The Committee resolved to adopt the Report during the next sitting.

MIN. NO. DDC/JLAC/242/2026: **CONSIDERATION OF THE ELECTORAL REFORMS THROUGH THE COMMITTEE OF THE WHOLE HOUSE AMENDMENTS TO THE ELECTIONS (AMENDMENT) (NO. 2) BILL (SENATE BILL NO. 29 OF 2024)**

The Committee deliberated on the Committee Stage amendments proposed to the Elections (Amendment) (No. 2) Bill (Senate Bill No. 29 of 2024) by the Committee, and the proposals on electoral reforms as submitted by the Independent Electoral and Boundaries Commission (IEBC), vide their letters dated 13th July 2026 and 26th May 2026 (Ref: IEBC/CP/7/3), including:

i. Amendment to Clause 2 of the Bill in paragraph (e), as submitted by the Commission, by insertion of a new definition of the term "forensic image" to mean an exact duplicate of a digital storage device including a server, computer, laptop, tablet or memory card collected in a manner that preserves the contents of the storage device for purposes of presentation and analysis of the contents. The Committee rejected the proposed definition.

ii. Amendment to clause 2 to delete paragraph (d) which provided for the insertion of the word "valid" in the definition of "identification document". The Committee observed that the requirement of having a valid identification document for purposes of registration as a voter and voting may lead to disfranchisement.

iii. Amendment to Clause 3 of the Bill by deletion of paragraph (c). The proposed new section 5(3A) seeks to disqualify a person who registers as a voter during the period of suspension from eligibility to contesting in a by-election. The provision may be transferred to section 29 which outlines additional disqualifications for contesting in an election.

iv. Amendment to clause 16 to correct an error in the cross-reference and to limit the resemblance of symbols to candidates within the same county. The Committee agreed with the amendment.

v. Amendment to clause 21 of the Bill, as submitted by IEBC, to expand the maximum number of number of voters per polling station with the intention of reducing the

cost of elections. The Committee resolved to retain the provisions as stipulated in the Act.

vi. Amendment to clause 25 and 26 by deleting provisions of the Principal Act on the Right of recall and Petition for recall, noting that provisions for recall may be provided for in a stand-alone legislation. The Committee resolved to propose deletion of the provisions declared unconstitutional by the Courts.

vii. Amendment to Section 82 of the Act, as proposed by the IEBC, to introduce provisions for scrutiny of technology. The provision provides for scrutiny of the related material including forensic image of the server under confidential cover. The Committee rejected the proposal noting that Election petitions are generally open and accessible to the public to safeguard transparency.

On the introduction of provisions to require the Commission, and Parties to an election petition to comply with the Data Protection Act, the Committee observed that the same is provided for in the relevant Act.

viii. Amendment to Section 85A of the principal Act, as proposed by the IEBC, to provide that no second appeal shall lie to the Court of Appeal under the section or any other law from a judgment or decision of the High Court in an election petition concerning the election of a member of a county assembly. The Committee agreed with the proposed amendment.

ix. Proposed amendment by the Commission to Section 109 of the principal Act by deleting subsection (3) and substituting therefor with a new subsection to provide that the Commission shall make or amend its regulations and publish them in the Gazette not later than four months before the date of a general election. Reiterating the need for Parliament to oversight delegated legislation, the Committee rejected the proposal and resolved to retain the provision as stipulated in the Act.

In addition, the Committee resolved to recommend the deletion of the Proviso under Section 109(3) of the Act.

On the proposed insertion of a new subsection after subsection (3) to provide that the Commission shall subject the regulations made or amended to public participation in accordance with the Statutory Instruments Act, the Committee noted the same is already provided for and therefore no need for legislation.

Arising from the above recommendations, the Committee resolved to retain Section 109(4) as provided for in the Act.

The Committee resolved to deliberate further on the implications of the proposed amendments, and on electoral reforms in general, during the next sitting, and to propose further amendments where necessary.

MIN. NO. DDC/JLAC/243/2026: ADJOURNMENT

The meeting was adjourned at seven minutes past twelve o'clock. Next meeting to be held on Thursday, 1st October 2026 at 10:00 am.

SIGNED: .....**DATE:** 01.10.2026

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

Annexure **3**

The Sexual Offences (Amendment) Bill (National Assembly Bills No.50 of 2025)

SPECIAL ISSUE

Kenya Gazette Supplement No. 190 (National Assembly Bills No. 50)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2025

NAIROBI, 12th November, 2025

CONTENT

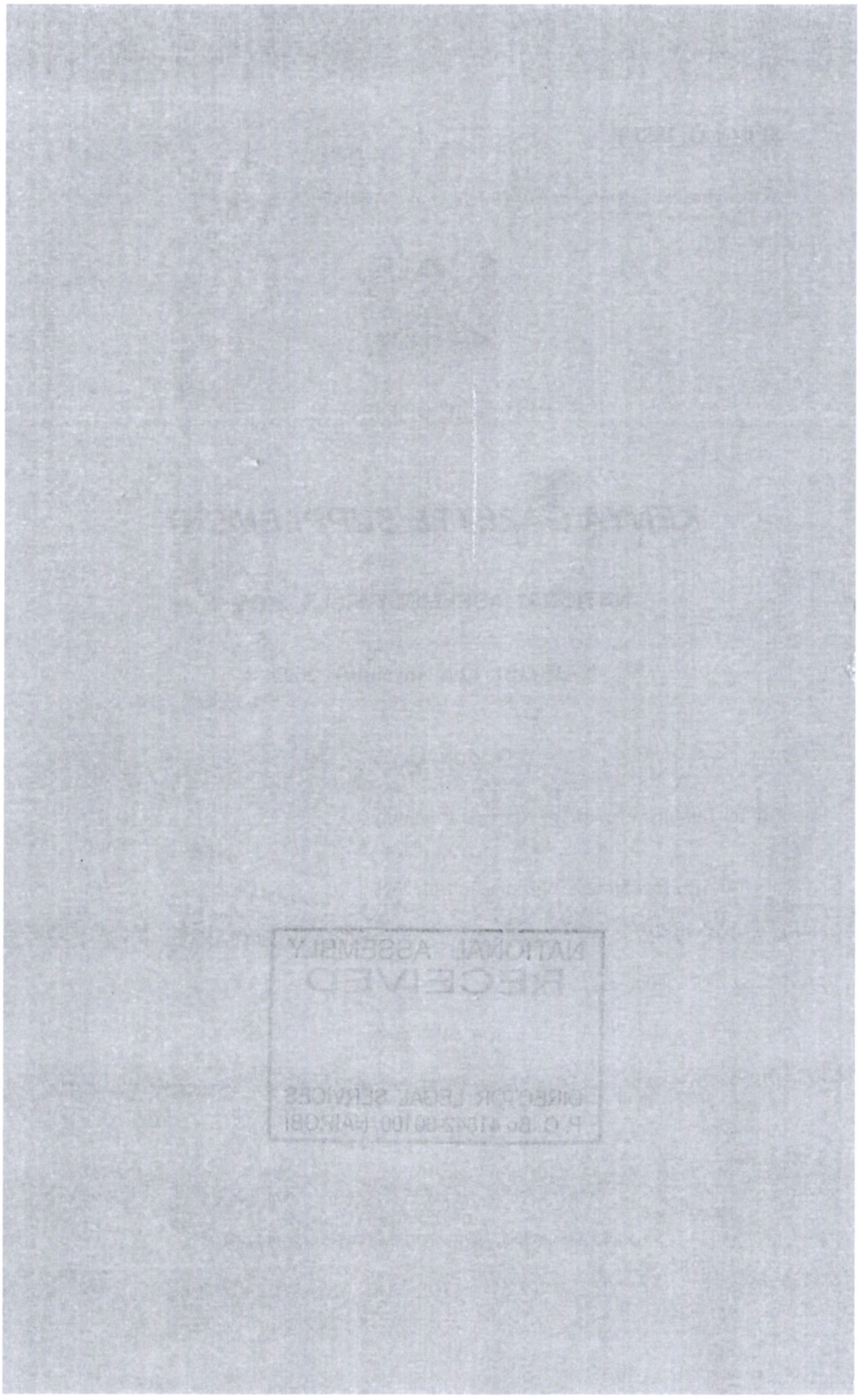
Bill for Introduction into the National Assembly—

PAGE

The Sexual Offences (Amendment) Bill, 2025 1213

NATIONAL ASSEMBLY
RECEIVED
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DIRECTOR LEGAL SERVICES
P. O. Bo 41842-00100, NAIROBI

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THE SEXUAL OFFENCES (AMENDMENT) BILL, 2025

A Bill for

AN ACT of Parliament to amend the Sexual Offences Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Sexual Offences (Amendment) Act, 2025.

Insertion of a new section 40A into Cap. 63A.

2. The Sexual Offences Act, is amended by inserting the following new section immediately after section 40—

Traditional dispute resolution mechanisms not to apply to sexual offences.

"**40A.** (1) Notwithstanding any other written law, the offences specified under this Act shall be prosecuted exclusively through the judicial system.

(2) Any agreement, settlement, or process purporting to dispose of offences under this Act outside the formal judicial process shall be void and of no legal effect."

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of the Bill is to amend the Sexual Offences Act (*Cap. 63A)* to strengthen the legal framework governing the prosecution of sexual offences in Kenya. The Bill seeks to ensure that offences specified under the Sexual Offences Act are adjudicated exclusively through formal judicial processes.

In line with Article 159(3) of the Constitution, this amendment is proposed to safeguard the rights of victims from processes that are repugnant to Justice and morality, and ensure that justice is administered in a manner consistent with the Constitution.

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

The Bill does not contain any provisions limiting any fundamental rights or freedoms.

Indication of whether the Bill concerns County Governments

Paragraph 7b of Part 1 of the Fourth Schedule to the Constitution provides that criminal law is a function of the National government. In view of this, the Bill does not concern the County Governments in terms of Article 110 (1)(a) of the Constitution as it does not affect the functions and powers of County Governments.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may not occasion additional expenditure of public funds.

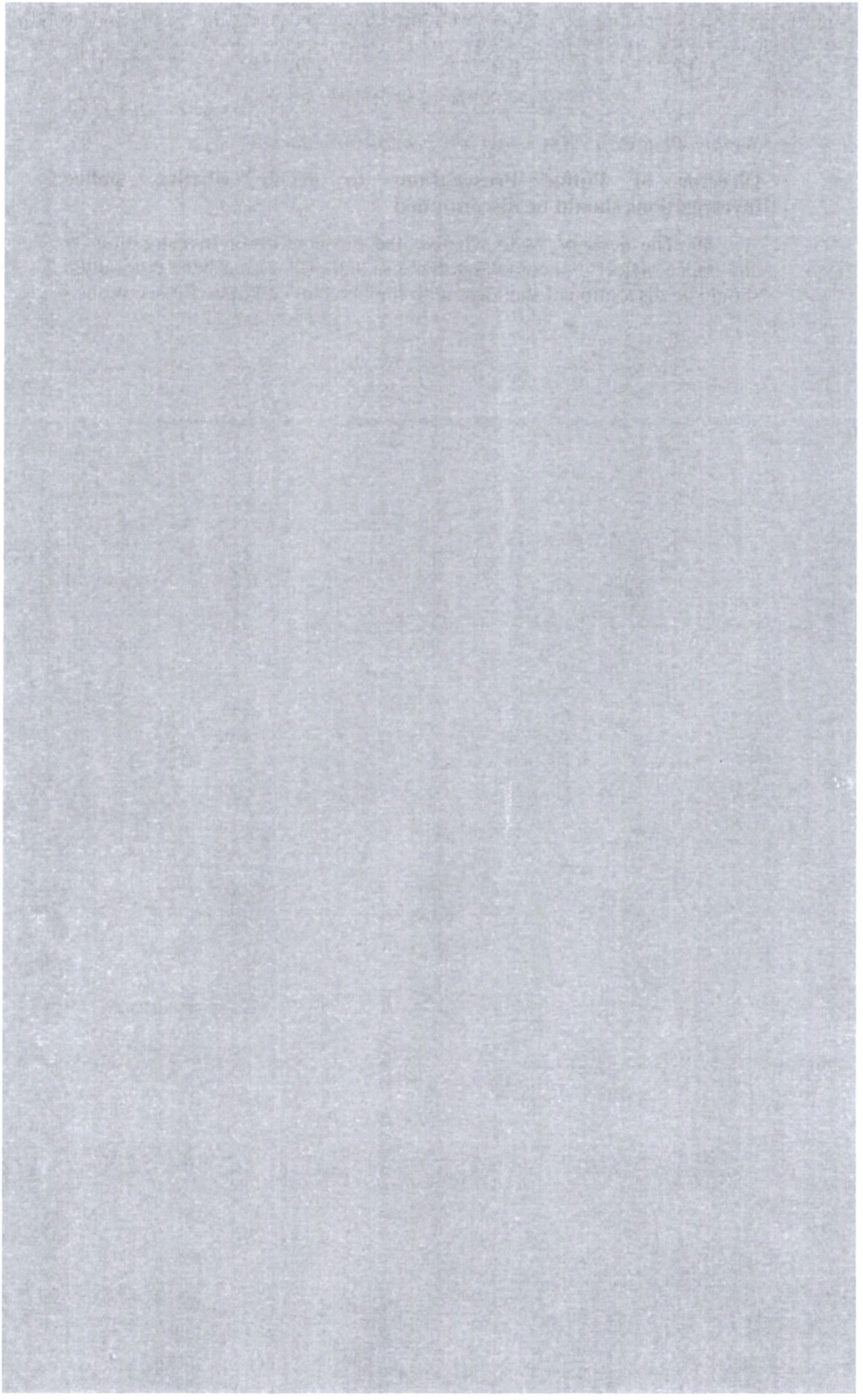
Dated the 15th October, 2025.

UDGOON SIYAD KUNO,
Member of Parliament.

Section 40 of Cap. 63A, which it is proposed to amend—

Director of Public Prosecutions to decide whether police investigations should be discontinued

40. The decision as to whether the prosecution or investigation by any police officer of a complaint that a sexual offence has been committed should be discontinued shall rest with the Director of Public Prosecutions.



Annexure 4

Advertisement inviting the public to submit memoranda on the Bill

Standoff County chiefs are embroiled in a major dispute with senators over summonses by House committees

Kanja backs senators on arrest of 'rogue' governors

IG says no public officer is above the law, says police service ready to enforce summonses

BY COLLINS OMULO

Inspector-General of Police Douglas Kanja has warned "rogue" governors who are ignoring parliamentary summonses that he will not hesitate to arrest them and present them before the relevant committees.

This latest development comes at a time when governors are embroiled in a major dispute with senators over their appearances before the committees.

The police chief said that no public officer is above the law, and that his officers are ready to enforce committee summonses.

Appearing before the Senate County Public Accounts Committee, which has been criticised by governors, Mr Kanja said that the National Police Service is committed to supporting parliamentary committees in carrying out their oversight duties.

He told the committee, chaired by Homa Bay Senator Moses Kajwang', that the collaboration between the NPS and parliamentary committees is guided by various legal and constitutional provisions that allow the NPS to participate in the committees' oversight functions, thereby strengthening good governance and accountability.

He said Article 125 of the Constitution empowers parliamentary committees to summon witnesses and request documents.

"I am ready to arrest and present governors who fail to honour summonses by Senate oversight committees, provided you give me the time and date you want them presented before you," said Mr Kanja yesterday.

The IG said the police are always ready to comply with the committees' directives, and are also ready and available to provide security for the committees while they carry out their duties during meetings and site visits.

"The County Public Accounts Committee, in exercising its powers under Article 125 of the Constitution, may summon county officials or governors to appear before it to respond to audit queries. In instances where they refuse to comply, the Service, under the direction of the committee, is always ready to arrest and present them before the committee as requested," he said.

Mr Kanja said that, where the committee establishes that public funds have been misused, the Service is ready and willing to assist with further investigations, evidence gathering and ensuring that any county official or governor found to be at fault is prosecuted The committee wanted to know why the NPS has been slow to implement their requests for errant governors to be arrest and presented before the panel.



Inspector-General of Police Douglas Kanja when he appeared before the Senate County Public Accounts Committee yesterday at Bunge Tower in Nairobi. DENNIS ONSONGO I NATION

> Catch for us the little foxes ruining our vineyard. The little foxes sit in the Council of Governors... yet they want to avoid accountability
>
> Moses Kajwang', Homa Bay senator

"Catch for us the little foxes r ining our vineyard. The little fc es sit in the Council of Governc and public offices, yet they wa to avoid accountability. Nobo is above the law in this republi said Mr Kajwang'.

Nyamira Senator Okong Omogeni added: "We want to s actions that act as a deterrent b cause your mandate also involv prevention of graft and ensuri accountability. There is no way v can hold the officers accountab if they don't appear before us."

Kitui Senator Enock Wambu said there are many criminal a tivities going on in counties whe financial documents suddenly up in flames to cover up theft.

Last month, Senator Kajwar said errant governors are ha py paying the Sh500,000 fine ir posed after summonses.

The committee has been at lo gerheads with several governo over snubbing committee invit and summonses, with the pa el last month asking the IG to a rest and present Samburu Gove nor Lati Lelelit for failing to ho our two summonses.

Other governors who have bee in the crosshairs of the comm tee include Isiolo Governor Ab Guyo, Kisii's Simba Arati, and A dulswamad Nassir of Mombasa.

comulo@ke.nationmedia.com

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT- FIFTH SESSION (2026)

THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF—
(1)THE LOCAL CONTENT BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2025); AND
(2)THE SEXUAL OFFENCES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 50 OF 2025).

INVITATION TO SUBMIT MEMORANDA

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

AND WHEREAS, The Local Content Bill (National Assembly Bill No. 45 of 2025) **and** The Sexual Offences (Amendment) Bill (National Assembly Bill No. 50 of 2025) were read a First Time and referred to the **Departmental Committee on Trade, Industry and Cooperatives** and the **Departmental Committee on Justice and Legal Affairs**, respectively, for consideration and reporting back to the House:

IT IS NOTIFIED that-

(1) The **Local Content Bill (National Assembly Bill No. 45 of 2025)** is a Bill sponsored by the **Hon. Jane Kagiri, MP** that seeks to create a framework to regulate local content in Kenya. Lack of a local content regulatory framework has inhibited the growth of the local industry in key economic sectors as companies incorporated outside Kenya procure their goods, services, supplies and workforce without adequate involvement of local companies and workforce. This has contributed to unfair practices that have rendered the local businesses and players unable to compete effectively.

(2) The **Sexual Offences (Amendment) Bill (National Assembly Bill No. 50 of 2025)** is a Bill sponsored by the **Hon. Amina Udgoon Siyad Kuno, MP** that seeks to amend the Sexual Offences Act (Cap. 63A) to strengthen the legal framework governing the prosecution of sexual offences in Kenya. The Bill seeks to ensure that offences specified under the Sexual Offences Act are adjudicated exclusively through formal judicial processes to safeguard the rights of victims from processes that are repugnant to justice and morality, and ensure that justice is administered in a manner consistent with the Constitution.

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

	BILL	DEPARTMENTAL COMMITTEE
1.	Local Content Bill (National Assembly Bill No. 45 of 2025)	Trade, Industry and Cooperatives
2.	Sexual Offences (Amendment) Bill (National Assembly Bill No. 50 of 2025)	Justice and Legal Affairs

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

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi, hand-delivered to the **Office of the Clerk, Main Parliament Building, Nairobi;** or emailed to cna@parliament.go.ke to be received on or before **Friday, 27th February, 2026** at **5.00 p.m.**

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY

13th February, 2026

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

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | FIFTH SESSION (2026)

THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

Pursuant to sections 25(2) and 33(1) of the Public Finance Management Act, Cap. 412A, the Cabinet Secretary for the National Treasury and Economic Planning submitted the **2026 Budget Policy Statement** and the **2026 Medium-Term Debt Management Strategy** for consideration and approval by the Senate.

The **2026 Budget Policy Statement** and the **2026 Medium-Term Debt Management Strategy** were tabled in the Senate on Thursday, 12th February, 2026 and subsequently referred to the Standing Committee on Finance and Budget for consideration and facilitation of public participation.

The **2026 Budget Policy Statement** sets out the broad strategic priorities and policy goals that will guide the national government and county governments in preparing their budgets for Financial Year 2026/2027 and over the medium-term.

The **2026 Medium-Term Debt Management Strategy** outlines the strategies and initiatives that will inform Government borrowing, minimize costs and risks of the current public debt portfolio.

In compliance with the provisions of Article 118(1)(b) of the Constitution and standing order 186(6) of the Senate Standing Orders, the Committee now invites interested members of the public to submit any representations that they may have on **2026 Budget Policy Statement** and **2026 Medium-Term Debt Management Strategy** by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to **clerk.senate@parliament.go.ke** and copied to **financebudgetcomm.senate@parliament.go.ke**, to be received on or before **Friday, 20th February, 2026 at 5.00 p.m.**

The **2026 Budget Policy Statement** and **2026 Medium-Term Debt Management Strategy** may be accessed on the Parliament website at **http://www.parliament.go.ke/the-senate/house-business/papers-laid.**

J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.

Annexure 5

Memoranda by Stakeholder(s)

"Empowering women in all their diversities towards comprehensive wellbeing"

A MEMORANDUM TO THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

SUBMITTED TO

CLERK OF THE NATIONAL ASSEMBLY

PO BOX 41842-00100, NAIROBI

IN

IN RESPONSE TO THE INVITATION TO SUBMIT MEMORANDA

THE SEXUAL OFFENCES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 50 OF 2025)

Submitted Pursuant to Article 118(1)(b) of the Constitution of Kenya

24th February 2026

Submitted by:

Women Empower and Mentor All Community Based Organization (WEmpower)

P.O Box 3129-40100 ,Kisumu City ,Kenya

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Kisumu County

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Twitter: @lbqtcommunity
TikTok:@lbqtcommunity
Website: www.empowermentmentor.org
Telephone:254-735-220-682

"Empowering LBQT+ womxn in all their diversities towards comprehensive wellbeing"

1.0 INTRODUCTION

Women Empower and Mentor All (WEmpower) is a community-based organization founded to advance the empowerment of women in all their diverse identities, expressions, and lived realities. The organization works to strengthen the capacity of women to make informed and autonomous choices while addressing the intersectional barriers that contribute to systemic powerlessness across economic, social, cultural, technological, legal, and environmental spheres in Kisumu Central Constituency, Kisumu County.

Women Empower and Mentor All has reviewed and interrogated the sexual offences (amendment bill) of the national assembly No. 50 of 2025 and submits this memorandum in response to the invitation for public participation and submission of memoranda by the National Assembly Thirteenth Parliamentary (Fifth Session) dated 13th February 2026.

This memorandum highlights Women Empower and Mentor All's select views of the proposals included in the proposed Amendment Bill sponsored by Garissa woman representative Amina Udgoon Siyad, which aims to amend the 2006 Act to strengthen prosecutions, promote national public awareness, and protect the education rights of victims, including pregnant teenagers. It focuses on addressing gaps in tackling sexual crimes, reducing stigma, and improving coordination between police, health, and judicial sectors.

2.0 BACKGROUND CONTEXT

Women Empower and Mentor All (Empower) welcomes the introduction of the Sexual Offences (Amendment) Bill, 2025, which proposes the insertion of Section 40A to ensure that offences under the Sexual Offences Act are prosecuted exclusively through formal judicial mechanisms.

This legislative reform is both necessary and responsive to documented systemic weaknesses in Kenya's GBV response architecture. The Report of the Technical Working Group on Gender-Based Violence including Femicide (November 2025) identifies persistent barriers to justice including family interference, coerced settlements, delayed prosecutions, inadequate survivor-centered procedures, fragmented data systems, underfunding, and failure to recognize emerging forms of violence such as technology-facilitated abuse.

The Technical Working Group explicitly recommends legislative harmonization, criminalization of obstruction of justice in GBV cases, time-bound prosecution processes, survivor-centered justice standards, data accountability mechanisms, and fiscal strengthening through a GBV Fund. Concurrently, Kenya reaffirmed under its 4th Cycle Universal Periodic Review (UPR) commitments its obligations to uphold equality and non-discrimination (Article 27), strengthen police accountability, eliminate harmful cultural practices, and ensure access to justice for marginalized communities.

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TikTok:@lbqtcommunity
Website: www.empowermentmentor.org
Telephone:254-735-220-682

Legislative reforms must therefore ensure coherence between domestic law and Kenya's constitutional and international commitments. Accordingly, this Memorandum proposes targeted amendments to **Section 40A** to ensure that the Bill not only centralizes prosecution but operationalizes constitutional equality, survivor protection, and systemic reform of all women regardless of their sexual orientation, gender identity and/or expression including sex characteristics.

3.0 EVIDENCE OF PATTERNS OF VIOLENCE

Community-based evidence from marginalized and gender non-conforming women in Kisumu County demonstrates that survivors experiencing layered vulnerabilities face compounded barriers to reporting sexual and gender-based violence. These barriers include fear of retaliation, coercive reconciliation, institutional bias, digital harassment, and exposure to morality-based policing practices. These lived realities mirror the structural findings of the GBV and Femicide Technical Working Group, particularly with respect to intersectional invisibility and systemic obstruction of justice. According to the E4UBU study (n=227, Kisumu County), nearly 70% of lesbian, bisexual, queer, and transgender respondents reported emotional intimate partner violence; over 40% reported physical violence; 37% reported forced vaginal sex by men; 42% reported blackmail; and over 60% experienced online harassment. Underreporting remains pervasive due to fear of arrest, forced outing, police disbelief or ridicule, and economic dependency. These findings demonstrate that lesbian, bisexual, queer, and transgender survivors face distinct and intensified barriers compared to heterosexual cisgender women.

Additionally, marginalized and gender non-conforming persons assigned female at birth frequently rely on informal dispute resolution mechanisms that prioritize reconciliation over accountability, thereby silencing survivors and perpetuating impunity.

While the Bill strengthens procedural integrity by channeling offences through the formal judicial system, it does not yet address the structural barriers that prevent marginalized survivors from safely and effectively accessing justice.

4.0 SPECIFIC RECOMMENDATIONS SEXUAL OFFENCES (AMENDMENT) BILL, 2025 TO INCLUDE PROPOSED AMENDMENTS TO SECTION 40(A) INTO CAP.63A

4.1 AMEND SECTION 40A(1): NON-DISCRIMINATION CLAUSE

While Section 40A(1) ensures that offences under this Act are prosecuted exclusively through the judicial system, it does not expressly safeguard against discriminatory barriers to accessing justice.

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"Empowering LBQT+ womxn in all their diversities towards comprehensive wellbeing"

The GBV and Femicide Technical Working Group Report (Chapters 2 and 4) highlights the phenomenon of intersectional invisibility, where marginalized and excluded groups face compounded vulnerabilities due to fragmented victim recognition and systemic bias. Without an explicit equality safeguard, the risk of discriminatory application remains. To strengthen constitutional coherence and ensure inclusive survivor protection, we propose that Section 40A(1) be amended to read:

"40A(1) Notwithstanding any other written law, the offences specified under this Act shall be prosecuted exclusively through the judicial system in a manner consistent with Article 27 of the Constitution, guaranteeing equality and freedom from discrimination."

4.2 INSERT NEW SECTION 40A(1)(a) :NON-DISCRIMINATION AND PROTECTION FROM RETALIATORY PROSECUTION

The GBV and Femicide Technical Working Group Report highlights family obstruction of justice (Executive Summary, Point 3) and ineffective community dispute resolution mechanisms (Chapter 3), including practices that intimidate complainants and undermine formal justice processes. Gender non-conforming and marginalized survivors are particularly vulnerable to retaliatory arrest, harassment, or counter-charges unrelated to the reported offence. To operationalize the recommendation against extrajudicial settlements and obstruction of justice, we propose the insertion of a new subsection to read:

"40A(1)(a) A complainant reporting an offence under this Act shall not be subjected to arrest, investigation, harassment, or prosecution solely on the basis of their identity, association, status, or personal characteristics unrelated to the alleged offence."

4.3 AMEND SECTION 40A(2): CRIMINALIZE COERCIVE WITHDRAWAL

While Section 40A(2) voids informal settlements outside the judicial process, it does not expressly address intimidation, coercion, or undue influence that compels survivors to withdraw complaints. In practice, forced reconciliation and family-mediated pressure remain significant barriers to justice and undermine the purpose of this Act. To strengthen safeguards against coercive withdrawal and eliminate harmful practices that perpetuate impunity, we propose that Section 40A(2) be revised to read:

"40A (2)Any agreement, settlement, reconciliation, or withdrawal of complaint arising from intimidation, coercion, discrimination, or undue influence shall be void and of no legal effect."

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4.4 INSERT NEW SECTION 40A(3): RECOGNITION OF GENDER-MOTIVATED OFFENCES

The Bill currently does not expressly recognize bias-motivated or gender-based hostility as an aggravating factor in sentencing. This omission risks overlooking the structural and discriminatory dimensions of sexual violence, particularly in cases involving intimate partner control, coercion, or hostility based on actual or perceived identity. Recognition of gender-motivated offences would align the Act with Kenya's constitutional commitment to equality and freedom from discrimination, as well as its regional obligations under the African Union framework on ending violence against women and girls. We therefore propose the insertion of the following section:

40A(3) In determining sentence for an offence under this Act, the Court shall treat as an aggravating circumstance the fact that the offence was committed on the basis of the complainant's actual or perceived sexual orientation, gender identity, gender expression, sex characteristics, or other protected status, or where the offence was motivated by gender-based hostility, intimate partner control, coercion, or discriminatory animus.

4.5. INSERT NEW SECTION 40A(4) and (a): RECOGNITION OF TECHNOLOGY-FACILITATED SEXUAL VIOLENCE

The rise in Technology-Facilitated Gender-Based Violence (TFGBV), coupled with persistent underreporting due to stigma, digital harassment, and privacy breaches, necessitates strengthened confidentiality safeguards and digital accountability measures. The GBV and Femicide Technical Working Group Report underscores the need for survivor protection, data-sensitive justice processes, and modernization of legal frameworks to address emerging forms of violence inadequately covered by existing law. To align the Sexual Offences (Amendment) Bill, 2025 with contemporary digital realities and Kenya's data protection framework, we propose the insertion of a new Section 40A (4) and 40A(4)(b) to read:

"40A(4) Where disclosure of a complainant's identity may expose the survivor to stigma, discrimination, intimidation, online harassment, or risk of further harm, the Court shall take appropriate protective measures, including in-camera proceedings, pseudonymization, or restricted publication orders.

40A(4)(a) Courts shall recognize, admit, and ensure the proper preservation of digital evidence in cases involving technology-facilitated sexual violence, subject to applicable evidentiary and data protection standards."

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4.6 INSERT SECTION 40A(5): MANDATORY TIMELINES FOR GBV CASE DETERMINATION

The GBV and Femicide Technical Working Group Report recommends a six-month timeline for the determination of GBV cases (Legal Reform Section) in order to mitigate witness fatigue, reduce case backlog, and minimize re-traumatization caused by delayed justice processes. Further, Chapters 6 and 9 of the Report identify systemic gaps, including inadequate training of frontline responders and fragmented, retraumatizing justice pathways for survivors. To give effect to the Report's explicit legislative reform recommendations, we propose the inclusion of the following provision:

"(5) Proceedings under this Act shall be prioritized and, where practicable, concluded within six (6) months. Investigations and prosecutions shall be conducted in a survivor-centered and trauma-informed manner."

4.7 INSERT IMPLEMENTATION CLAUSE IN THE BILL

In the Memorandum of Objects and Reasons of the Amendment Bill, it is stated whether the Bill is a Money Bill within the meaning of Article 114 of the Constitution. The Memorandum further indicates that the Bill will not occasion additional expenditure of public funds. However, without accompanying implementation regulations and a dedicated funding mechanism, the proposed reforms risk remaining purely procedural rather than transformative. Absent clear regulatory frameworks and budgetary commitments, the amendment may inadvertently reinforce existing institutional bias, rendering Parliament's intervention symbolic rather than substantively compliant with its constitutional obligations.

We therefore recommend the inclusion of a regulation-making clause to support the operationalization of the National GBV and Femicide Response Fund, to read:

".....The Cabinet Secretary shall, within twelve months of commencement, develop regulations and guidelines to give effect to this section, including training standards for investigators, prosecutors, and judicial officers."

5.0 CONCLUSION

The proposed amendments to Section 40A into CAP.63 are not an expansion of the scope of the Sexual Offences framework, but a necessary refinement to ensure that its protections are meaningful, accessible, and constitutionally coherent. The evidence presented including community-based data from Kisumu County and the findings of the GBV and Femicide Technical Working Group demonstrates that procedural routing of cases through the courts, while important, is insufficient on its own to dismantle structural barriers that prevent marginalized survivors from accessing justice safely and without discrimination.

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Article 27 of the Constitution guarantees equality before the law and equal protection and benefit of the law. Article 28 protects inherent dignity. Article 48 guarantees access to justice, while Article 50 affirms the right to a fair and expeditious hearing. Read together, these provisions impose a positive obligation on the State to ensure that legislative frameworks do not merely criminalize conduct in abstract terms, but operate in a manner that is non-discriminatory, accessible, and responsive to documented patterns of vulnerability.

The evidence presented, including the findings of the GBV and Femicide Technical Working Group and community-based empirical data, demonstrates that survivors facing intersecting forms of marginalization experience systemic barriers that inhibit reporting, expose them to retaliation, and discourage engagement with the formal justice system. Where legislation centralizes prosecution exclusively within the judicial system but fails to address discriminatory access barriers, coercive withdrawals, identity-based targeting, confidentiality gaps, and technology-facilitated harm, the practical effect may be to entrench unequal protection contrary to Article 27.

The proposed amendments therefore serve a clarificatory and harmonizing function. They do not expand criminal liability beyond the scope of the Act; rather, they align its procedural architecture with constitutional standards of equality, dignity, and access to justice. By expressly prohibiting discriminatory application, safeguarding complainants from retaliatory action, recognizing bias-motivated offending as an aggravating factor, and modernizing confidentiality and digital evidence protections, Parliament would be reinforcing the constitutional requirement that justice be both formal and substantive. In this regard, adoption of the proposed amendments would enhance statutory coherence, reduce interpretive ambiguity, and strengthen the constitutional defensibility of the Sexual Offences (Amendment) Bill, 2025.

We respectfully urge the Committee to consider these proposals as necessary measures to ensure that the Sexual Offences (Amendment)Bill 2025 Act withstands constitutional scrutiny and operationalizes Parliament's obligation to provide equal and effective protection against gender-based violence, reflects contemporary realities, strengthens institutional accountability, and affirms Parliament's commitment to delivering justice that is accessible, survivor-centered, and non-discriminatory for all.

-END-

(2) Abenayo Nduvite, HoD
For the attention of JLAC.
Dm 1/9/26

(1) DDC
8
1/9/26

Salim Ahmed
Pls deal.
Anasie
01/09/2026

REPUBLIC OF KENYA
IN THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT — FOURTH SESSION (2026)

MEMORANDUM ON THE SEXUAL OFFENCES (AMENDMENT) BILL, 2025

TO:

The Clerk of the National Assembly,
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Email: cna@parliament.go.ke

FROM:

Nduta Muthua
Email Address: emuthua@gmail.com
Mobile No: +254 727 610 812

1. General Position in Support of the Bill

I support the **Sexual Offences (Amendment) Bill, 2025**, sponsored by **Udgoon Siyad Kuno, Member of Parliament**.

The Bill seeks to strengthen Kenya's legal framework governing sexual offences. I particularly support the proposed insertion of section 40A, which seeks to ensure that sexual offences are prosecuted through the formal judicial system and are not privately disposed of through traditional dispute resolution mechanisms or other processes outside the formal justice system.

I submit the following proposal for the Committee's consideration, with the specific objective of strengthening proposed section 40A so that its application is not limited, expressly or by interpretation, to traditional dispute resolution mechanisms.

The proposed amendment seeks to ensure that sexual offences cannot be privately disposed of through alternative forms of negotiation, settlement, mediation, compensation arrangements, institutional processes, contractual arrangements, or other mechanisms that may have the effect of circumventing the formal criminal justice process.

I respectfully submit that broadening section 40A in this manner would strengthen the Bill's objective while preserving legitimate legal, medical, psychosocial, civil compensation, and other support available to victims and survivors.

DIRECTOR
SEP 2026
Directorate of Departmental Committees

NATIONAL ASSEMBLY
RECEIVED
31 AUG 2026
CLERK'S OFFICE
P. O. Box 41842, NAIROBI.

2. Proposed Amendment to Section 40A

The Bill proposes to amend the Sexual Offences Act by inserting the following new section immediately after section 40:

40A. Traditional dispute resolution mechanisms not to apply to sexual offences

(1) Notwithstanding any other written law, the offences specified under this Act shall be prosecuted exclusively through the judicial system.

(2) Any agreement, settlement, or process purporting to dispose of offences under this Act outside the formal judicial process shall be void and of no legal effect.

3. Submission

I support the intention of the proposed section 40A to ensure that sexual offences are not privately disposed of outside the formal judicial system.

However, I submit that the provision should be broadened so its application is not limited, expressly or by interpretation, to traditional dispute resolution mechanisms.

The heading of the proposed section specifically refers to *"Traditional dispute resolution mechanisms not to apply to sexual offences."* While this is an important safeguard, sexual offences may also be subjected to other forms of private dispute resolution, negotiation, or settlement that do not fall within what would ordinarily be understood as traditional dispute resolution.

These may include community or family negotiated settlements, religious processes, mediation, private negotiation, advocate facilitated settlements, employer or organizational processes, compensation agreements, confidentiality agreements, non-disclosure agreements, waivers, releases, undertakings, and other contractual or negotiated arrangements.

Although subsection 40A(2) uses the broader terms *"any agreement, settlement, or process,"* the specific reference to traditional dispute resolution in the heading may create uncertainty as to the intended scope of the provision.

I therefore propose that section 40A be amended to expressly cover **traditional, customary, and other forms of private dispute resolution, settlement, and institutional processes** through which a sexual offence may be purportedly disposed of outside the formal judicial process.

4. Proposed Section 40A

40A. Traditional, customary, and other private dispute resolution and settlement mechanisms not to apply to sexual offences

(1) Notwithstanding any other written law, the offences specified under this Act shall be prosecuted exclusively through the judicial system.

(2) Any agreement, settlement, or process, whether oral or written, formal or informal, purporting to dispose of, compromise, or otherwise determine an offence under this Act outside the formal judicial process shall be void and of no legal effect.

(3) For the purposes of subsection (2), an agreement, settlement, or process includes one facilitated, negotiated, arranged, entered, witnessed, drafted, approved, advised upon, or otherwise participated in by:

(a) a traditional or customary leader;

(b) a community leader;

(c) a religious leader;

(d) an advocate or other legal practitioner;

(e) a mediator, conciliator, or arbitrator;

(f) a public officer or other public official;

(g) an employer or representative of an employer or organization;

(h) an institution or organizational representative;

(i) a parent, guardian, relative, or family member;

(j) a health, social service, or child protection practitioner; or

(k) any other person.

Such agreements, settlements, or processes may include:

(a) traditional or customary dispute resolution;

(b) community- or family-based dispute resolution;

(c) religious dispute resolution;

(d) mediation, conciliation, or arbitration;

(e) private negotiation or settlement;

(f) an agreement facilitated or negotiated by an advocate or other legal practitioner;

(g) an employer, workplace, institutional, or organizational process;

(h) a compensation or settlement arrangement;

(i) a confidentiality or non-disclosure agreement;

(j) a waiver, release, or undertaking; or

(k) any other private arrangement purporting to dispose of, compromise, or otherwise determine a sexual offence outside the formal judicial process.

(4) A person shall not make the payment or provision of any compensation, benefit, or other consideration to a victim, survivor, parent, guardian, or other person conditional upon the acceptance of an arrangement purporting to dispose of a sexual offence outside the formal judicial process.

(5) Any confidentiality agreement, non-disclosure agreement, gag order, waiver, release, undertaking, settlement agreement, consent, contract, or other provision that purports to

dispose of, compromise, or otherwise determine a sexual offence outside the formal judicial process shall, to the extent of that purpose or effect, be void and unenforceable.

(6) No consent, agreement, undertaking, or contractual obligation entered into by a victim, survivor, parent, guardian, witness, or other person shall constitute a lawful basis for disposing of or determining a sexual offence outside the formal judicial process.

(7) The invalidity or unenforceability of an agreement, settlement, undertaking, or arrangement under this section shall not prevent or otherwise affect the prosecution of the sexual offence to which the agreement or arrangement relates.

(8) Where the victim or survivor is a child, person with a disability, older person, or other person in a position of particular vulnerability, no parent, guardian, caregiver, relative, representative, or other person purporting to act on behalf of such person may enter into, facilitate, or consent to an agreement or arrangement prohibited under this section.

(9) A person who knowingly facilitates, negotiates, procures, drafts, executes, enforces, or attempts to enforce an agreement or arrangement prohibited under this section commits an offence.

(10) Nothing in this section shall prohibit:

(a) the provision of legal advice to a victim or survivor;

(b) the provision of medical, psychosocial, financial, or other support to a victim or survivor;

(c) a lawful claim for civil compensation or damages arising from a sexual offence; or

(d) any other lawful victim support or remedy,

provided that such advice, support, compensation, claim, or remedy does not purport to dispose of, compromise, or otherwise determine the criminal sexual offence outside the formal judicial process.

(11) For the purposes of this section, an agreement, settlement, or arrangement shall be considered by reference to its substance, purpose, and effect, regardless of the name, form, or legal character given to it.

5. Justification for the Proposed Amendment

5.1 Basis for broadening the provision

As set out above, the heading of the proposed section refers only to traditional dispute resolution mechanisms, while subsection 40A (2) already uses the broader language of "any agreement, settlement, or process." This inconsistency, together with the reality that a sexual offence can be privately resolved through many channels other than a traditional or customary forum, is the basis for the broadening proposed below. The remainder of this section sets out the specific grounds for that broadening.

5.2 Formal legal and professional processes should not create a separate avenue for private disposal

An arrangement may be facilitated within a formal professional or institutional setting. An advocate may facilitate a settlement, an employer may seek to resolve a matter internally, a public officer may become involved in an arrangement, and a mediator, religious leader, family member, or other intermediary may similarly facilitate an agreement.

The fact that an arrangement is facilitated by a person acting in a professional, institutional, familial, or public capacity should not alter the application of section 40A. The proposed subsection 40A(3) therefore expressly identifies advocates, public officers, employers, institutions, and other persons who may facilitate, negotiate, arrange, draft, approve, or otherwise participate in such arrangements.

5.3 Compensation arrangements should not provide an alternative means of privately disposing of a sexual offence

Private resolution may also take the form of compensation or another benefit offered in connection with a sexual offence.

The concern is not with lawful compensation or civil remedies available to victims and survivors. Rather, the concern arises where compensation, financial assistance, property, employment, benefits, or other consideration forms part of an arrangement purporting to privately dispose of or compromise a criminal sexual offence outside the formal judicial process.

The proposed subsection 40A(4) seeks to ensure that compensation or another benefit cannot form the basis of such a private disposal.

5.4 Confidentiality and other contractual arrangements should not create an unintended loophole

A private settlement may be structured through documents that do not use dispute-resolution terminology. For example, parties may enter into a confidentiality agreement, non-disclosure agreement, gag order, waiver, release, undertaking, consent, or other contractual arrangement.

If the legislation is interpreted primarily through the traditional concept of dispute resolution, such arrangements could create uncertainty as to whether they fall within section 40A. The proposed subsection 40A(5) therefore expressly recognizes these forms of arrangements.

5.5 The provision should prevent circumvention through terminology or legal form

The substance of an arrangement should be more important than the label attached to it.

An arrangement purporting to privately dispose of a sexual offence should not fall outside the provision merely because it is described as a settlement, agreement, undertaking, release, compensation arrangement, mediation agreement, or another contractual instrument.

The proposed subsection 40A(11) therefore provides that an arrangement should be considered by reference to its substance, purpose, and effect, regardless of the name, form, or legal character given to it. This would help prevent circumvention through legal drafting or alternative terminology.

5.6 Particular consideration should be given to vulnerable persons

The potential for private arrangements to be used to resolve sexual offences is particularly concerning where the victim or survivor may be vulnerable to coercion, dependency, intimidation, manipulation, or undue influence. This may include children, persons with disabilities, and older persons, among others.

For example, a person with a disability may depend upon a caregiver or family member who could influence decisions concerning the handling of an alleged sexual offence. Similarly, an older person may depend upon relatives or caregivers for accommodation, financial support, personal care, or other essential needs.

The law should therefore ensure that vulnerability arising from age, disability, dependency, or other circumstances cannot be exploited through private arrangements concerning sexual offences. The proposed subsection 40A (8) provides specific protection where the victim or survivor is a child, person with a disability, older person, or another person in a position of particular vulnerability.

5.7 The provision should preserve legitimate victim remedies and support

The purpose of the amendment should not be to prevent victims and survivors from obtaining lawful remedies or support. Victims and survivors should remain able to obtain legal advice, medical and psychosocial support, civil remedies, compensation, and other lawful assistance.

The proposed subsection 40A (10) therefore preserves legitimate victim support and civil remedies. The distinction is between a lawful remedy available to a victim or survivor and an agreement or arrangement that purports to dispose of or determine a criminal sexual offence outside the formal judicial process.

5.8 The amendment should apply regardless of who facilitates the arrangement

The prohibition should not depend upon who facilitates, negotiates, drafts, witnesses, approves, or otherwise participates in the arrangement.

Expressly including an advocate, public officer, employer, institutional representative, family member, religious leader, mediator, health or social service practitioner, and any other person ensures that the provision cannot be circumvented by simply changing the person or institution through which the arrangement is facilitated. The focus should remain on the nature, purpose, and effect of the arrangement, not the identity or status of the person involved.

5.9 The amendment would strengthen the principal object of the Bill without unnecessarily expanding its scope

The principal object of the Bill is to strengthen the legal framework governing sexual offences and ensure that offences under the Sexual Offences Act are prosecuted through formal judicial processes.

The proposed amendment does not seek to duplicate the broader legal framework governing reporting, investigation, or prosecution. Instead, it addresses the specific gap identified in proposed

section 40A: the risk that a provision specifically directed at traditional dispute resolution mechanisms may leave other forms of private dispute resolution, settlement, or institutional arrangement available for the same purpose.

Broadening the provision in this targeted manner would ensure that the prohibition is not limited by the forum, terminology, contractual form, or person through which the private arrangement is facilitated. The amendment would therefore strengthen the Bill's intended objective while ensuring that the prohibition cannot be circumvented merely by using a different form of private settlement or dispute resolution.

6. Conclusion

I respectfully urge the National Assembly and the relevant Committee to consider strengthening proposed section 40A by expressly extending its application beyond traditional dispute resolution mechanisms to include customary, community, family, religious, professional, institutional, and other private arrangements that purport to dispose of, compromise, or otherwise determine a sexual offence outside the formal judicial process.

The proposed amendment would provide greater clarity, prevent circumvention, protect vulnerable victims and survivors, and reinforce the principle that criminal sexual offences are matters of public justice and should not be privately negotiated away.

I respectfully submit these proposals for the National Assembly's consideration.

Submitted by:
Nduta Muthua
Date: 30th August 2026
Signature: NM

End