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SWA
8/6/23

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

.....

REPORT ON THE CONSIDERATION OF THE PENAL CODE (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 56 OF 2022)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 08 JUN 2023	DAY: Thursday
TABLED BY:	Hon. George Murogara (Chairperson, Justice and Legal Affairs Committee)
CLERK-AT THE TABLE:	Anne Shibuho

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2023

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LIST OF ABBREVIATIONS AND ACRONYMS

DCI	-	Directorate of Criminal Investigation
EACC	-	Ethics and Anti-Corruption Commission
H.E.	-	His Excellency
HELB	-	Higher Education Loans Board
KLRC	-	Kenya Law Reform Commission
KRA	-	Kenya Revenue Authority
MCCP	-	Maendeleo Chap Chap Party
NCAJ	-	National Council on the Administration of Justice
ODM	-	Orange Democratic Movement
ODPP	-	Office of the Director of Public Prosecution
ORPP	-	Office of the Registrar of Political Parties
PSC	-	Public Service Commission
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

ANNEXURES

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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 Penal Code (Amendment) Bill (*National Assembly Bill No. 56 of 2022*) which was published on Wednesday 16th November, 2022.

The Bill was read for the first time in the House on Wednesday 8th March, 2023 and thereafter committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has two (2) clauses and seeks to amend the Penal Code Cap. 63 by repealing section 182 which prescribes the offence of idle and disorderly persons. The proposal aims to protect members of the public from unwarranted harassment implicated upon them by law enforcers.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on Friday 10th March, 2023 inviting the public to submit memoranda by way of written statements on oath (affidavit) on the Bill. In addition, the Clerk of the National Assembly vide letter dated 27th March, 2023 of Ref. No. NA/DDC/JLAC/2023/031 invited key stakeholders to submit views on the Bill. The memoranda were to be received on or before Friday 24th March, 2023 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received seven memoranda.

Further, the Committee invited key stakeholders to attend a public participation forum on Thursday 4th May, 2023 vide letter dated 25th April, 2023 of Ref. No. NA/DDC/JLAC/2023/039. The Judiciary, the National Police Service, the Independent Policing Oversight Authority (IPOA), *Uraia Trust* and *Mzalendo* attended the forum and gave their views on the Bill which the Committee considered in the preparation of this report.

While considering the Bill, the Committee observed from a majority of the submissions received that Section 182 of the Penal Code has been abused by law enforcement agencies to harass the public and infringe on fundamental human rights and freedoms. In this regard, the Committee is in agreement with the sponsor of the Bill that the Section be repealed.

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 Penal Code (Amendment) Bill (*National Assembly Bill No. 56 of 2022*). 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 the Kenya Law Reform Commission (KLRC), the Kenya National Commission on Human Rights (KNCHR), the Independent Policing Oversight Authority (IPOA), the Attorney General, the Law Society of Kenya (LSK), the National Police Service, the Judiciary, *Uraia Trust* and *Mzalendo* for submitting memoranda on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Penal Code (Amendment) Bill (*National Assembly Bill No. 56 of 2022*) and have the honour to report back to the National Assembly with the recommendation that the Bill be approved without amendments.

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Penal Code (Amendment) Bill (*National Assembly Bill No. 56 of 2022*)

Hon. Murugara George Gitonga, MP
Chairperson, 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 consider¹:-

- 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 oversees the following Ministries/Departments:

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

¹ National Assembly Standing Orders, 6th Edition.

m) Council of Legal Education.

1.3 Committee Membership

4. The Departmental Committee on Justice and Legal Affairs was constituted by the House on 27th October, 2022 and comprises the following Members:

Chairperson

Hon. Murugara George Gitonga, MP
Tharaka Constituency

UDA Party

Vice-Chairperson

Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency

MCCP Party

Members

Hon. Maalim Farah, MP
Dadaab Constituency

WDM-Kenya

Hon. Francis Kajwang' Tom Joseph, MP
Ruaraka Constituency

ODM Party

Hon. Junet Mohamed, CBS, MP
Suna East Constituency

ODM Party

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

ODM Party

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

UDA Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency

UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency

FORD-Kenya

Hon. Muriu Wakili Edward, MP
Gatanga Constituency

UDA Party

Hon. Maina Jane Njeri, MP
Kirinyaga (CWR)

UDA Party

Hon. Gichohi Kaguchia John Philip, MP
Mukurweini Constituency

UDA Party

Hon. Mogaka Stephen M, MP
West Mugirango Constituency

Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency

Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa Township (CWR)

Jubilee Party

1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Douglas Katho
Clerk Assistant I/Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Ms. Vivienne Ogega
Research Officer III

Mr. Stanley Lagat
Senior Serjeant-At-Arms

Ms. Faith Jully
Public Communication Officer III

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Antony Kariuki
Serjeant-At-Arms

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Fridah Ngari
Media Relations Officer III

Ms. Jael Ayiego
Clerk Assistant III

Mr. Peter Mutethia
Audio Officer III

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Alex Amwatta
Hansard Reporter III

Mr. Alvin Ochieng'
Research Officer III

Mr. Silas Opanga
Hansard Reporter III

CHAPTER TWO

2 OVERVIEW OF THE PENAL CODE (AMENDMENT) BILL (*NATIONAL ASSEMBLY BILL NO. 56 OF 2022*)

2.1 Background

6. The Bill which was sponsored by Hon. David Gikaria, MP was published on Wednesday 16th November, 2022 and read for the first time in the House on Tuesday 8th March, 2023. It was thereafter committed to the Departmental Committee on Justice and Legal Affairs.

2.2 Summary of Legal Provisions

7. The Penal Code (Amendment) Bill seeks to amend the Penal Code, Cap. 63 by repealing Section 182 which provides for the offence of idle and disorderly persons as follows:

“The following persons—

- a) Every common prostitute behaving in a disorderly or indecent manner in any public place;*
- b) Every person causing, procuring or encouraging any person to beg or gather alms;*
- c) Deleted by Act No. 61 of 1968, s. 22;*
- d) Every person who publicly conducts himself in a manner likely to cause a breach of the peace;*
- e) Every person who without lawful excuse publicly does any indecent act;*
- f) Every person who in any public place solicits for immoral purpose;*
- g) Deleted by Act No. 61 of 1968, s.22,*

Shall be deemed idle and disorderly persons, and are guilty of a misdemeanor and are liable for the first offence to imprisonment for one month or to a fine not exceeding one hundred shillings, or to both and for every subsequent offence to imprisonment for one year.”

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

7. 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.”

8. 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 Penal Code (Amendment) Bill, 2022

9. Pursuant to the aforementioned provisions of law, the Clerk of the National Assembly placed an advertisement in the print media on Friday 10th March, 2023 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Clerk of the National Assembly vide letters dated 17th March, 2023 and 25th April, 2023 of Reference Numbers NA/DDC/JLAC/2023/031 and NA/DDC/JLAC/2023/039 invited key stakeholders to submit views on the Bill and attend a public participation forum on Thursday 4th May, 2023 respectively.

10. To this end, the Departmental Committee on Justice and Legal Affairs received nine memoranda from the Judiciary, the KLRC, the KNCHR, the IPOA, the National Police Service, the Attorney General, the LSK, *Mzalendo* and *Uraia Trust*. The memoranda are annexed to this report as *Annexure 7*.

11. The Judiciary; the Independent Policing Oversight Authority; the Kenya Law Reform Commission; the Kenya National Commission on Human Rights; the Attorney General; *Mzalendo* and *Uraia* submitted Memoranda in support of the proposed repeal.

12. **The Judiciary** submitted that the National Council on the Administration of Justice (NCAJ) has noted that it has identified several petty offences that should be decriminalized. They supported the proposed repeal but noted that the section also makes it a crime to cause, procure or encourage any person to beg or gather alms. According to the Judiciary, a total repeal of the section would result in a gap in the punishment of persons who encourage children to beg on the streets including human traffickers. They urged Parliament to undertake a more comprehensive review of the Penal Code to repeal other petty offences.
13. According to the **Independent Policing Oversight Authority**, the provision creates an avenue for human rights violations and is vague and ambiguous, making it susceptible to abuse by law enforcement officers. Its repeal would enhance relations between the public and police and allow the police to focus on investigations of serious crimes as opposed to being bogged down with handling petty offences. It was their submission that alleged petty offenders experience human rights violations including false arrests and arbitrary detention at different stages of the justice system including during arrest, detention before trial, trial and sometimes, during the post-trial period. IPOA noted that in the Financial Year 2021/2022, it received 294 complaints of harassment and 126 complaints of wrongful detention, representing the third highest number of complaints lodged with the Authority during that Financial Year. The trend is also reflected in an audit conducted by the National Council on Administrative Justice which established that 68% of entries in police cells relate to petty offences and a further 45% of arrests of mainly persons of low income were carried out during the weekend. This, according to NCAJ, contributes to clogging of the justice system where 30% of cases in court relate to petty offences.
14. The **Kenya Law Reform Commission** noted that Kenya is one of the few African countries that were under the British colonial rule that maintain vagrancy provisions in the Penal Code. It was their submission that the section sought to be repealed was last amended by section 22 of the Vagrancy Act, No. 61 of 1968 (which was later repealed by the Statute Law (Repeals and Miscellaneous Amendments) Act, No. 10 of 1997). Consequently, KLRC was of the view that the section and other similar ones should also be repealed. They referred to previous reforms and pronouncements of the courts with regard to vagrancy offences including the 2016 NCAJ audit of the criminal justice system in Kenya which established that the criminal justice system was skewed against the poor and that more poor people than rich people were arrested, charged, convicted and sent to prison. Additionally, KLRC noted that the High Court in

Constitutional Petition No. 14 of 2007 questioned the sustainability of the offence of being idle and disorderly in the statute books save for the reason of being a fertile provision for the police to use as a tool to infringe and or violate the right to equality and non-discrimination under Article 27 of the Constitution.

15. The **Kenya National Commission on Human Rights** noted that the proposal is in line with the efforts of the NCAJ to decriminalize petty offences and will, among others, decongest the prisons, reduce backlog of cases in court and reduce human rights violations to the suspected perpetrators. It was their submission that the proposed repeal is in line with the *Principles on the Decriminalization of Petty Offences in Africa*. The *Principles* note, among others that—

- (a) petty offences discriminate against people on the basis that they are poor, are vulnerable, are part of a key population, or on account of their gender, age or disability; and are used to punish, keep separate, control and negatively affect the dignity of people because of one or more aspects of who they are;
- (b) people living in poverty are at high risk of being arrested for a petty offence because they perform life-sustaining activities in public places;
- (c) by arresting and detaining people for petty offences, African countries reinforce the idea that people unfairly targeted by these laws are not respected and do not have the same right to dignity as other people;
- (d) sanctions imposed for petty offences can affect a person's dignity, and can cause people to experience ill-treatment. The Commission therefore advised African countries to, among others, decriminalise certain petty offences; provide alternatives to arrest for petty offences that are not decriminalised; and address the root causes of poverty and other forms of marginalisation rather than criminalising activities that are caused by poverty and marginalisation.

16. KNCHR further submitted that the amendments to the Penal Code contained in the Statute Law (Miscellaneous Amendments) Bill, 2022 be included in the proposal by the Hon. Gikaria. They further proposed that the Committee include in the Bill a repeal of section 226 of the Penal Code which provides for the offence of attempting suicide, a misdemeanour punishable by imprisonment for a term not exceeding two years, or a fine or both. It was their view that criminalization of attempted suicide is tantamount to discrimination against persons with disabilities and is contrary to the constitutional requirements on the right of persons to the highest attainable standard of healthcare under Article 43 of the Constitution of Kenya, the

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022)

right to equality before the law and non-discrimination on the basis of health status and disability under Article 27 of the Constitution; the right to human dignity under Article 28; the rights of persons with disabilities as protected in Article 54; and the protection of the best interest of the child as well as the rights of the child recognized in Article 55 of the Constitution.

17. The **Attorney General** submitted that the provisions of section 182 are not necessary as its prohibitions are already comprehensively provided for in other sections of the Penal Code and its penalties conflict with penalties provided for similar offences. According to the Attorney General—

- (a) section 182 (a) which prohibits common prostitutes from behaving in a disorderly or indecent manner in any public place is discriminatory because it specifically targets prostitutes yet other people could also behave in a disorderly or indecent manner;
- (b) section 182 (d) which prohibits a person from publicly conducting himself in a manner likely to cause a breach of the peace is not necessary as other provisions in the Penal Code provide for breach of peace, including section 94 on offensive conduct conducive to breaches of the peace and section 95 on threatening breach of the peace or violence;
- (c) section 182 (e) which prohibits a person from doing an indecent act does not define what constitutes an “indecent act” and therefore allows room for enforcers to subjectively interpret the ingredients of the offence; and
- (d) section 182 (f) which prohibits a person who is in any public place from soliciting for immoral purposes is unnecessary as section 153(1) (b) provides for the offence of living on earnings of prostitution or soliciting.

18. *Mzalendo* noted that the proposed repeal is also aligned with Article 9(1) of the International Convention on Civil and Political Rights, which Kenya has ratified. The Convention prohibits arbitrary arrest and detention. It was their submission that the section—

- (a) is outdated, vague, and allows for misuse in its application thereby leading to violation of the constitutional rights of individuals through arbitrary arrests, harassment and unreasonable bail terms;
- (b) stemmed from colonial laws that were aimed at subjugation of Kenyans at the time to criminalize unemployment, poverty and homelessness which is in contravention of Article 27(4) of the Constitution;

- (c) targets the status of persons and not their behaviour, as they are victimless crimes and often, no injury or danger is caused to persons or public in general;
 - (d) does not also provide a measure of what constitutes disorderly conduct, leaving it to the discretion of police who misuse it.
19. *Uraia* submitted that the current provision is vague with regard to the conduct that it seeks to prohibit. According to them, the provision—
- (a) has been used in the past to harass women in particular and the Sexual Offences Act (No. 3 of 2006) already deals with matters of prostitution;
 - (b) criminalises poverty and the giving or receiving of alms which can be a religious or cultural practice, by defining anyone engaging in almsgiving or receiving as “idle and disorderly”; and
 - (c) is prone to abuse and has been deployed in the past to prevent citizens and other persons from exercising their human rights such as the right to picket and the freedom of expression.
20. The National Police Service and the Law Society of Kenya submitted Memoranda opposing the proposed repeal.
21. According to the **National Police Service**, criminal law provides a framework to guide citizens’ behaviour. As such, section 182 prohibits conduct that threatens public interest; defines and warns people of criminality of the offensive conduct; classifies the offences under the section as minor; and imposes punishment to protect the society and promote retribution and deterrence. It was their view that—
- (a) the section complements sections 29 and 62 of the Criminal Procedure Code on cognizable offences and the preventive mandate of the NPS;
 - (b) amendment of section 182(a) may imply legalization of prostitution;
 - (c) section 182(b) acts as deterrence to begging on the streets and its amendment will attract more beggars and result in public nuisance and promote human trafficking for purposes of begging; and
 - (d) repeal of paragraphs (d), (e) and (f) without proposing alternative provisions will encourage public immorality at the expense of individual rights to moral dignity.
22. In light of the foregoing, the National Police Service registers its reservations to the intended amendment and submits the considered view that the provision should be retained for the purpose of preservation of public morality and order and in the context of public interest.

23. On its part, the **Law Society of Kenya** submitted that the section should be maintained as it is as a social protection measure. According to the LSK, the current provision balances the right to people's privacy and public interest. They urged that the Committee should only contemplate amendments to enhance the existing provisions, including—
- (a) expanding paragraph (b) of the section to outlaw “aiding begging” by, for example, providing shelter or spaces where beggars operate from; and
 - (b) amending paragraph (d) for purposes of introducing gender-neutral terms.
24. Save for the proposal to expand the contents of the Bill by KNCHR, the Committee agreed with the views received in support of the Bill. With regard to the submissions made by the NPS and LSK, it was the view of the Committee that there are currently adequate provisions in the Penal Code, the Sexual Offences Act and the Counter-Trafficking in Persons Act to cater for the concerns raised with regard to prostitution, public nuisance and human trafficking.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

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

- a) That from majority of the submissions received, Section 182 of the Penal Code has been abused by law enforcement agencies to harass the public and infringe on fundamental human rights and freedoms.
- b) The proposed repeal of section 182 of the Penal Code is in line with the *Principles on the Decriminalization of Petty Offences in Africa* adopted by the African Commission on Human and Peoples Rights in 2017. In adopting the *Principles*, the Commission advised African countries to decriminalise petty offences and address the root causes of poverty and other forms of marginalisation rather than criminalising activities that are caused by poverty and marginalisation. The proposal by the Hon. Gikaria, MP seeks to repeal what amounts to a petty offence.
- c) Standing Order 133 (5) of the National Assembly Standing Orders provides as follows:

“No amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill.”

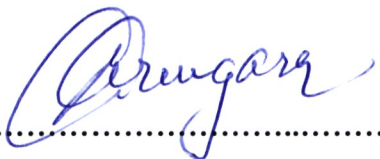
The proposals to expand the contents of the Bill by KNCHR to include repeal of the offence of attempted suicide and to include other provisions contained in the Statute Law (Miscellaneous Amendments) Bill, 2022 are precluded by the Standing Orders.

- d) That there are currently adequate provisions in the Penal Code, the Sexual Offences Act and the Counter-Trafficking in Persons Act to cater for the concerns raised with regard to the alleged decriminalization of prostitution, public nuisance and human trafficking.

CHAPTER FIVE

6 COMMITTEE RECOMMENDATIONS

26. The Committee, having considered the Penal Code (Amendment) Bill (*National Assembly No. 56 of 2022*) and the submissions from members of the public and stakeholders, recommends that the House approves the Bill without amendments.

SIGNED.......... DATE.....*19-5-2023*.....

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

ANNEXURES

Annexure 1: Adoption Schedule



THE NATIONAL ASSEMBLY
13TH PARLIAMENT – SECOND SESSION (2023)
JUSTICE AND LEGAL AFFAIRS COMMITTEE

ADOPTION SCHEDULE

Agenda: The Penal Code (Amendment) Bill (*National Assembly Bill No. 56 of 2022*)
by Hon. David Gikaria, MP (Nakuru Town East)

No.	HON MEMBER	SIGNATURE
1.	HON. MURUGARA GEORGE GITONGA, MP – <i>Chairperson</i>	
2.	HON. MUTUSE ECKOMAS MWENGI, MP – <i>Vice Chairperson</i>	
3.	HON. MAALIM FARAH, MP	
4.	HON. FRANCIS KAJWANG' TOM JOSEPH, MP	
5.	HON. JUNET MOHAMED, CBS, MP	
6.	HON. ONYIEGO SILVANUS OSORO, CBS, MP	
7.	HON. (DR.) OTIENDE AMOLLO, SC, MP	
8.	HON. MUCHIRA MICHAEL MWANGI, MP	
9.	HON. MAKALI JOHN OKWISIA, MP	
10.	HON. MURIU WAKILI EDWARD, MP	
11.	HON. MAINA JANE NJERI, MP	
12.	HON. GICHOHI KAGUCHIA JOHN PHILIP, MP	
13.	HON. MOGAKA STEPHEN M, MP	
14.	HON. ADEN DAUD, EBS, MP	
15.	HON. SIYAD AMINA UDGOON, MP	

Annexure 2: Minutes



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023
DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**MINUTES OF THE 66TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD AT THE PIER ROOM, ENGLISH POINT MARINA, MOMBASA
COUNTY ON 19TH MAY, 2023 AT 10.00 A.M.**

PRESENT

Members

- | | |
|--|---------------------|
| 1. Hon. Murugara George Gitonga, MP | - Chairperson |
| 2. Hon. Mutuse Eckomas Mwengi, OGW, MP | - Vice- Chairperson |
| 3. Hon. Gichohi Kaguchia John Philip, MP | |
| 4. Hon. Muriu Wakili Edward, MP | |
| 5. Hon. Aden Daud EBS, MP | |
| 6. Hon. Maina Jane Njeri, MP | |
| 7. Hon. Makali John Okwisia, MP | |
| 8. Hon. Mogaka Stephen M, MP | |
| 9. Hon. (Dr.) Otiende Amollo, SC, MP | |
| 10. Hon. Muchira Michael Mwangi, MP | |

ABSENT

1. Hon. Junet Mohamed, CBS, MP
2. Hon. Francis Kajwang' Tom Joseph, MP
3. Hon. Siyad Amina Udgoon, MP
4. Hon. Maalim Farah, MP
5. Hon. Onyiengo Silvanus Osoro, CBS, MP

SECRETARIAT

- | | |
|---------------------------|---------------------------------|
| 1. Mr. Douglas Katho | - Clerk Assistant I |
| 2. Mr. Ronald Walala | - Senior Legal Counsel |
| 3. Mr. Omar Abdirahim | - Fiscal Analyst II |
| 4. Ms. Jael Ayiego Kilaka | - Clerk Assistant III |
| 5. Mr. Abdikafar Abdi | - Clerk Assistant III |
| 6. Ms. Vivienne Ogega | - Research Officer III |
| 7. Ms. Faith Jully | - Public Communications Officer |
| 8. Mr. Antony Kariuki | - Serjent-At-Arm |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Matters arising
5. **Bills;**
 - i. **The Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022) by Hon. David Gikaria, MP (Nakuru East)**
6. **Legislative Proposals;**
 - i. **Proposed Criminal Procedure Code (amendment) Bill, 2023 by Hon. Abdul R. Dawood, MP (Imenti North)**
 - ii. **Proposed Law of Contract (Amendment) Bill, 2023 by Hon. Simon King'ara, MP**
 - iii. **Proposed Marriage (Amendment) Bill, 2022 by Hon. Peter Francis Masara, MP (Suna West)**
 - iv. **Proposed National Coroners Service (Amendment) Bill, 2023 by Hon. Julius Lekakeny Sunkuli, MP (Kilgoris)**
 - v. **Proposed Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 by Hon. Peter Kaluma, MP (Homabay Town)**
7. Any Other Business
8. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2023/336: PRELIMINARIES

The meeting was called to order at twenty minutes past ten o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves.

MIN.NO/DC/JLAC/2023/337: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Maina Jane Njeri, MP and seconded by Hon. Makali John Okwisia, MP

MIN.NO/DC/JLAC/2023/338: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda was deferred.

MIN.NO/DC/JLAC/2023/339: BILL

Consideration and adoption of the Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022) by Hon. David Gikaria, MP (Nakuru East)

Committee Observation

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

- a) That from majority of the submissions received, Section 182 of the Penal Code has been abused by law enforcement agencies to harass the public and infringe on fundamental human rights and freedoms.
- b) The proposed repeal of section 182 of the Penal Code is in line with the *Principles on the Decriminalization of Petty Offences in Africa* adopted by the African Commission on Human and Peoples Rights in 2017. In adopting the *Principles*, the Commission advised African countries to decriminalize petty offences and address the root causes of poverty and other forms of marginalization rather than criminalizing activities that are caused by poverty and marginalization. The proposal by the Hon. Gikaria, MP seeks to repeal what amounts to a petty offence.
- c) Standing Order 133 (5) of the National Assembly Standing Orders provides as follows:

“No amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill.”

The proposals to expand the contents of the Bill by KNCHR to include repeal of the offence of attempted suicide and to include other provisions contained in the Statute Law (Miscellaneous Amendments) Bill, 2022 are precluded by the Standing Orders.

That there are currently adequate provisions in the Penal Code, the Sexual Offences Act and the Counter-Trafficking in Persons Act to cater for the concerns raised with regard to the alleged decriminalization of prostitution, public nuisance and human trafficking.

Committee Recommendations

The Committee, having considered the Penal Code (Amendment) Bill (*National Assembly No. 56 of 2022*) and the submissions from members of the public and stakeholders, recommends that the House approves the Bill without amendments.

MIN. NO/DC/JLAC/2023/340: ADJOURNMENT

There being no other business, the meeting was adjourned at eleven o'clock. The next meeting will be held at 2.00p.m.

SIGNED:  DATE: 19-5-2023
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023
DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

**MINUTES OF THE 58TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD AT COUNTY HALL BOARD ROOM, MAIN PARLIAMENT
BUILDINGS, NAIROBI ON AT 2.00 P.M.**

PRESENT

Members

- | | |
|--|---------------------|
| 1. Hon. Murugara George Gitonga, MP | - Chairperson |
| 2. Hon. Mutuse Eckomas Mwengi, OGW, MP | - Vice- Chairperson |
| 3. Hon. Gichohi Kaguchia John Philip, MP | |
| 4. Hon. Muriu Wakili Edward, MP | |
| 5. Hon. Aden Daud EBS, MP | |
| 6. Hon. Makali John Okwisia, MP | |
| 7. Hon. Maina Jane Njeri, MP | |

ABSENT

1. Hon. Maalim Farah, MP
2. Hon. Francis Kajwang' Tom Joseph, MP
3. Hon. Junet Mohamed, CBS, MP
4. Hon. Onyiengo Silvanus Osoro, CBS, MP
5. Hon. (Dr.) Otiende Amollo, SC, MP
6. Hon. Mogaka Stephen M, MP
7. Hon. Muchira Michael Mwangi, MP
8. Hon. Maina Jane Njeri, MP
9. Hon. Siyad Amina Udgoon, MP

IN ATTENDANCE

- | | |
|--|------------------------------------|
| 1. Mr. Paul Ndemo Maina | - Deputy Chief Registrar Judiciary |
| 2. Mr. Ken Ogutu | - Legal Counsel, Judiciary |
| 3. Dr. Mshai Mwangola | - Chair, Uraia Board of Trustees |
| 4. Ms. Caroline Giata | - Executive Director, Mzalendo |
| 5. Mrs. Anne Makori, EBS, | - Chairperson, IPOA |
| 6. Mr. Charles Ismael Otiemo Otiende SP- | National Police Service |

SECRETARIAT

1. Mr. Douglas Katho	-	Clerk Assistant I
2. Mr. Ronald Walala	-	Senior Legal Counsel
3. Ms. Jael Ayiego Kilaka	-	Clerk Assistant III
4. Mr. Abdikafar Sheikh Abdi	-	Clerk Assistant III
5. Ms. Vivienne Ogega	-	Research Officer III
6. Ms. Jully Faith	-	Public Communications Officer
7. Ms. Fridah Ngari	-	Media Relations Officer
8. Mr. Peter Mutethia	-	Audio Officer
9. Mr. Antony Kariuki	-	Serjeant-At-Arms

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Matters arising
5. **Bills;**
Public hearing from stakeholders on the Penal Code (Amendment) Bill, 2022
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2023/295: PRELIMINARIES

The meeting was called to order at thirty minutes past eleven o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves.

MIN.NO/DC/JLAC/2023/296: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Aden Daud, EBS, MP and seconded by Hon. Hon. Gichohi Kaguchia John Philip, MP

MIN.NO/DC/JLAC/2023/297: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda was deferred.

MIN.NO/DC/JLAC/2023/298: PUBLIC HEARING FROM STAKEHOLDERS ON THE PENAL CODE (AMENDMENT) BILL, 2022

The Judiciary of Kenya

The Deputy Registrar of the Judiciary, Mr. Paul Ndemo appeared before the Committee and submitted that:

Through its Committee on Criminal Justice Reforms, the National Council on the Administration of Justice (NCAJ) has reviewed the Penal Code and has noted that it has several petty offences that should be decriminalized.

The Judiciary is in support of the proposed repeal of Section 182 of the Penal Code.

The Judiciary noted that the section also makes it a crime to cause, procure or encourage any person to beg or gather alms. Children in urban areas are encouraged to beg on the streets by their parents, guardians or caregiver and in some cases by persons who traffic them across boards to beg in Kenya. A total repeal of the section would result in a gap in the punishment of such persons.

Kenya Law Reform Commission

The Commission undertook an analysis of the Bill as follows:

The offending provision was last amended by section 22 of the Vagrancy Act. No. 61 of 1968, which was later repealed by the Statute Law (Repeals and Miscellaneous Amendments) Act No. 10 of 1997.

The Act that introduced some of these petty offences has since been repealed, hence this section and other similar ones should also be repealed.

The reform of vagrancy offences has been raised a number of times including:

- i. In 2016, National Council on Administration of Justice (NCAJ) in collaboration with Legal Resources Foundation Trust and the Resources Oriented Development Initiatives conducted an audit of the criminal justice system in Kenya and found that it skewed against the poor than the rich people, who were arrested, charged, convicted and sent to prison.
- ii. The High Court in Constitutional Petition No. 14 of 2007 questioned the sustainability of the offence of being idle and disorderly in the statute books save for the reason of being a fertile provision for the police to use as a tool to infringe and or violate the right to equality and non-discrimination under Article 27 of the Constitution.

The Kenya Law Reform Commission recommended that the section should be repealed. The Commission further proposed the reform of various laws including the Penal Code

Independent Policing Oversight Authority (IPOA)

The term "petty offence" is not expressly defined in Kenya's statute books, including the Constitution, the Penal Code and the Criminal Procedure Code.

The closest similarity it bears to any offense defined in the Penal Code is the law about misdemeanor, which is simply defined as any offense that is not felony.

Petty offences are generally understood as minor criminal acts which attract less severe punishment and are considered to be a low level of seriousness.

The proposal to repeal the provision is a positive proposal that the Authority supported for the following five main reasons:

- i. The criminalization of what amounts to simply petty offences such as those set out in section 182 creates an avenue for human rights violations.

- ii. The provision is vague and ambiguous making it susceptible to abuse in application by law enforcement officers.
- iii. Repeal of such petty offences as set out in section 182 will enhance relations between the public and police since the police will not be constrained to enforce laws that appear aimed at simply criminalizing poverty.
- iv. Repeal of such petty offences allows the police to focus on investigations of serious crimes as opposed to being bogged down with handling petty offences.
- v. Repeal of such offences will go towards unclogging the justice system, the majority of which cases are petty offences such those set out in section 182 of the penal code.

URAIA

The Chairperson of the Uraia Board of Trustees, Dr. Mshai Mwangola, appeared before the Committee and submitted that:

The current provision is vague with regard to the conduct that it seeks to prohibit. According to them, the provision—

- (a) has been used in the past to harass women in particular and the Sexual Offences Act (No. 3 of 2006) already deals with matters of prostitution;
- (b) criminalizes poverty and the giving or receiving of alms which can be a religious or cultural practice, by defining anyone engaging in almsgiving or receiving as “idle and disorderly”; and
- (c) is prone to abuse and has been deployed in the past to prevent citizens and other persons from exercising their human rights such as the right to picket and the freedom of expression.

MZALENDO

The Executive Director of Mzalendo, Ms. Caroline Gaita appeared before the Committee and submitted that:

The proposed repeal aligns the Penal Code to the Constitution of Kenya, especially on Articles 10, 27, 28 and 49.

The proposed repeal is also aligned with Article 9(1) of the International Convention on Civil and Political Rights, which Kenya has ratified, which prohibits arbitrary arrest and detention.

The phrasing of the section was vague and gave room for misinterpretation and abuse through arbitrary arrests, harassment and unreasonable bail terms for Kenyans.

The section targeted the status of persons and not their behavior, as they are victimless crimes and often, no injury or danger is caused to persons or public in general.

The section does not also provide a measure of what constitutes disorderly, leaving it at the discretion of police who misuse it.

NATIONAL POLICE SERVICE

Mr. Charles Ismael Otiemo Otiende SP of the National Police Service appeared before the Committee and submitted that:

According to the National Police Service, criminal law provides a framework to guide citizens' behaviour. As such, section 182 prohibits conduct that threatens public interest; defines and warns people of criminality of the offensive conduct; classifies the offences under the section as minor; and imposes punishment to protect the society and promote retribution and deterrence. It was their view that—

- (a) the section complements sections 29 and 62 of the Criminal Procedure Code on cognizable offences and the preventive mandate of the NPS;
- (b) amendment of section 182(a) may imply legalization of prostitution;
- (c) section 182(b) acts as deterrence to begging on the streets and its amendment will attract more beggars and result in public nuisance and promote human trafficking for purposes of begging; and
- (d) repeal of paragraphs (d), (e) and (f) without proposing alternative provisions will encourage public immorality at the expense of individual rights to moral dignity.

In light of the foregoing, the National Police Service registered its reservations to the intended amendment and submits the considered view that the provision should be retained for the purpose of preservation of public morality and order and in the context of public interest.

MIN. NO/DC/JLAC/2023/299: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past three o'clock. The next meeting will be held on notice.

SIGNED:  DATE: 19-5-2023

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023
DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

**MINUTES OF THE 55TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD AT THE NG-CDF BOARD ROOM, 10TH FLOOR, HARAMBEE
SACCO PLAZA, NAIROBI ON 25TH APRIL, 2023 AT 2.00 P.M.**

PRESENT

Members

- | | |
|--|--------------------|
| 1. Hon. Murugara George Gitonga, MP | - Chairperson |
| 2. Hon. Mutuse Eckomas Mwengi, OGW, MP | -Vice- Chairperson |
| 3. Hon. Francis Kajwang' Tom Joseph, MP | |
| 4. Hon. Onyiengo Silvanus Osoro, CBS, MP | |
| 5. Hon. Gichohi Kaguchia John Philip, MP | |
| 6. Hon. Muriu Wakili Edward, MP | |
| 7. Hon. Aden Daud EBS, MP | |
| 8. Hon. Makali John Okwisia, MP | |
| 9. Hon. Siyad Amina Udgoon, MP | |
| 10. Hon. Muchira Michael Mwangi, MP | |
| 11. Hon. Maina Jane Njeri, MP | |

ABSENT

1. Hon. Maalim Farah, MP
2. Hon. Junet Mohamed, CBS, MP
3. Hon. (Dr.) Otiende Amollo, SC, MP
4. Hon. Mogaka Stephen M, MP

IN ATTENDANCE

1. Hon. David Gikara, MP
2. Hon. Simon King'ara, MP
3. Hon. Peter Francis Masara, MP
4. Hon. Julius Lekakeny Sunkuli, MP

SECRETARIAT

- | | | |
|----------------------|---|----------------------|
| 1. Mr. Douglas Katho | - | Clerk Assistant I |
| 2. Mr. Ronald Walala | - | Senior Legal Counsel |

- | | | |
|------------------------------|---|-------------------------------|
| 3. Ms. Jael Ayiego Kilaka | - | Clerk Assistant III |
| 4. Mr. Abdikafar Sheikh Abdi | - | Clerk Assistant III |
| 5. Mr. Alvin Ochieng | - | Research Officer III |
| 6. Ms. Vivienne Ogega | - | Research Officer III |
| 7. Ms. Jully Faith | - | Public Communications Officer |
| 8. Ms. Fridah Ngari | - | Media Relations Officer |
| 9. Mr. Peter Mutethia | - | Audio Officer |
| 10. Mr. Stanely Lagat | - | Serjeant-At-Arms |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Matters arising
5. **Bills;**
 - i. **Meeting with Hon. David Gikaria, MP (Nakuru East) regarding the Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022)**
6. **Legislative Proposals;**
 - i. **Meeting with Hon. Simon King'ara, MP regarding the Proposed Law of Contract (Amendment) Bill, 2023**
 - ii. **Meeting with Hon. Peter Francis Masara, MP (Suna West) regarding the Proposed Marriage (Amendment) Bill, 2022**
 - iii. **Meeting with Hon. Julius Lekakeny Sunkuli, MP (Kilgoris) regarding the Proposed National Coroners Service (Amendment) Bill, 2023**
7. Any Other Business
8. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2023/279: PRELIMINARIES

The meeting was called to order at twenty minutes past ten o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves.

MIN.NO/DC/JLAC/2023/280: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Aden Daud, EBS, MP and seconded by Hon. Hon. Gichohi Kaguchia John Philip, MP

MIN.NO/DC/JLAC/2023/281: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda was deferred.

MIN.NO/DC/JLAC/2023/282: LEGISLATIVE PROPOSALS

Meeting With Hon. Julius Lekakeny Sunkuli, Mp (Kilgoris) Regarding the Proposed National Coroners Service (Amendment) Bill, 2023

Hon. Julius Lekakeny Sunkuli, MP, the sponsor of the Proposed National Coroners Service (Amendment) Bill, 2023, appeared before the Committee and submitted that the principal object of the Bill is to amend the National Coroners Service (Amendment) Act, 2023 to provide that a person who qualifies to be the Coroner General must be an Advocate of the High Court of Kenya who has at least ten years of experience practicing as an advocate in Kenya.

He further stated that the Bill seeks to amend the following sections of the National Coroners Service (Amendment) Act, 2023:

- i. Section 2 be amended by deleting the word Cabinet Secretary and inserting a new definition of the "Commission" to mean the Judicial Service Commission established under Article 171(1) of the Constitution.
- ii. Section 9 be repealed and replaced with a new section for the appointment of Coroner General of the Service and coroners by the Judicial Service Commission.
- iii. Section 10 be repealed and replaced with a new section for the qualifications for appointment as Coroner General from a medical practitioner to an Advocate of the High Court of Kenya who has at least ten years of experience.
- iv. Section 11 be amended by deleting subsection (2) and substitute with a new subsection to provide for the terms of service of the Coroner General to be determined by the Judicial Service Commission.
- v. Section 12 of the Act be amended by deleting subsection (2) and substitute with a new subsection to provide that the removal from office of the Coroner General shall be determined by the Judicial Service Commission.
- vi. Section 14 be amended by deleting the words "public service" in subsection (1).
- vii. Section 15 be repealed and replaced with a new section to provide for officers and other staff of the Service shall be appointed the Judicial Service Commission.
- viii. Section 16 be amended by deleting the words "Cabinet Secretary" in subsection (1) and replace with "Commission" and deletion of subsection (3).
- ix. Section 18 be amended by deleting the words "Cabinet Secretary" and substituting with the word "Commission".
- x. Section 22 be amended by deleting the words "Cabinet Secretary" and substituting with the word "Commission" in subsection (2) and (3).
- xi. Section 24 be amended by deleting the words "Cabinet Secretary" and substituting with the word "Commission".
- xii. Section 35 be amended by deleting the words "Cabinet Secretary" and substituting with the word "Commission".
- xiii. Section 40 be amended by deleting the words "Cabinet Secretary" and substituting with the word "Commission".
- xiv. Section 42 be amended by deleting the words "Cabinet Secretary" and substituting with the word "Commission".
- xv. Section 57 be amended by deleting the words "Cabinet Secretary" and substituting with the word "Commission" in subsection (2).

- xvi. Section 58 be amended by deleting the words "Cabinet Secretary" and substituting with the word "Commission" in subsection (3).
- xvii. Section 74 be amended by deleting the words "Cabinet Secretary" and substituting with the word "Commission" in subsection (1).

He further stated that the Bill does not delegate legislative powers neither does it limit fundamental rights and freedoms.

Hon. Julius Lekakeny Sunkuli, MP urged the Committee to consider the Bill and recommend the House to approve the Bill with amendments as proposed.

The Committee Members thereafter posed questions to the sponsor of the Bill seeking clarifications on issues arising from his presentation.

The Committee made the following observations and recommendations:

- i. The proposed amendments sought to have the Coroner General be legal practitioner on account of the complexity and technical nature of the role which requires them to make recommendations on legal and policy interventions in accordance with international standards and practice. Further the proposal re-designates the office of the Coroner General and the National Coroners Service from the Public Service Commission to the Judicial Service Commission.
- ii. The Committee recommended the proposed amendments of the National Coroners Service (Amendment) Act, 2023 as proposed in the National Coroners Service (Amendment) Bill, 2023

MIN.NO/DC/JLAC/2023/283:

BILLS

Meeting With Hon. David Gikaria, MP (Nakuru East) Regarding the Penal Code (Amendment) Bill (National Assembly Bill No. 56 Of 2022)

Hon. David Gikaria, MP, the sponsor of The Penal Code (Amendment) Bill (National Assembly Bill No. 56 Of 2022), appeared before the Committee and submitted that section 182 of the Penal Code Cap 63 provides idle and disorderly persons to include:

- i. every common prostitute behaving in a disorderly or indecent manner in any public place;
- ii. every person causing, procuring or encouraging any person to beg or gather alms;
- iii. every person who publicly conducts himself in a manner likely to cause a breach of the peace;
- iv. every person who without lawful excuse publicly does any indecent act; and
- v. every person who in any public place solicits for immoral purposes.

He stated that section 182 provides that idle and disorderly persons are guilty of a misdemeanor and are liable for the first offence to imprisonment for one month or to a fine not exceeding one hundred shillings, or to both and for every subsequent offence to imprisonment for one year.

Hon. David Gikaria, MP informed the meeting that the principal object of the Bill is to amend the Penal Code Cap. 63 by repealing Section 182 which prescribes the offence of idle and disorderly persons. Often, law enforcers have used section 182 to harass innocent members of the public. He further stated that the Bill does not delegate legislative powers neither does it limit fundamental rights and freedoms.

Hon. David Gikaria, MP urged the Committee to consider the Bill and recommend the House to approve the Bill with amendments as proposed.

The Committee Members thereafter posed questions to the sponsor of the Bill seeking clarifications on issues arising from his presentation.

The Committee made the following observations and recommendations:

- iii. The proposed amendments sought to protect unfairly target people, preserve the dignity of people and protect vulnerable and innocent members of the public.
- iv. The repeal of Section 182 of Cap 63 will unclog the justice system whose majority of cases are petty offences set out in the section.
- v. The Committee recommended the repeal of Section 182 of The Penal Code Cap 63.

MIN. NO/DC/JLAC/2023/284: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past four o'clock. The next meeting will be held on notice.

SIGNED:  DATE: 19-5-2023
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)

Annexure 3: Penal Code
(Amendment) Bill, 2022
(National Assembly Bill no. 56 of
2022)

SPECIAL ISSUE

Kenya Gazette Supplement No. 186 (National Assembly Bills No. 56)



REPUBLIC OF KENYA

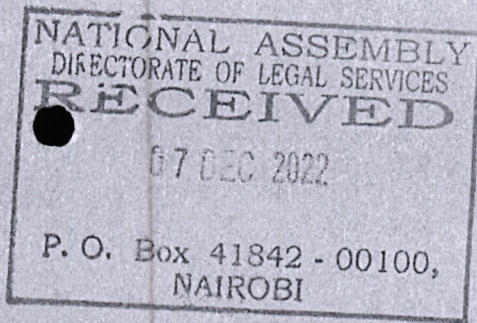
KENYA GAZETTE SUPPLEMENT

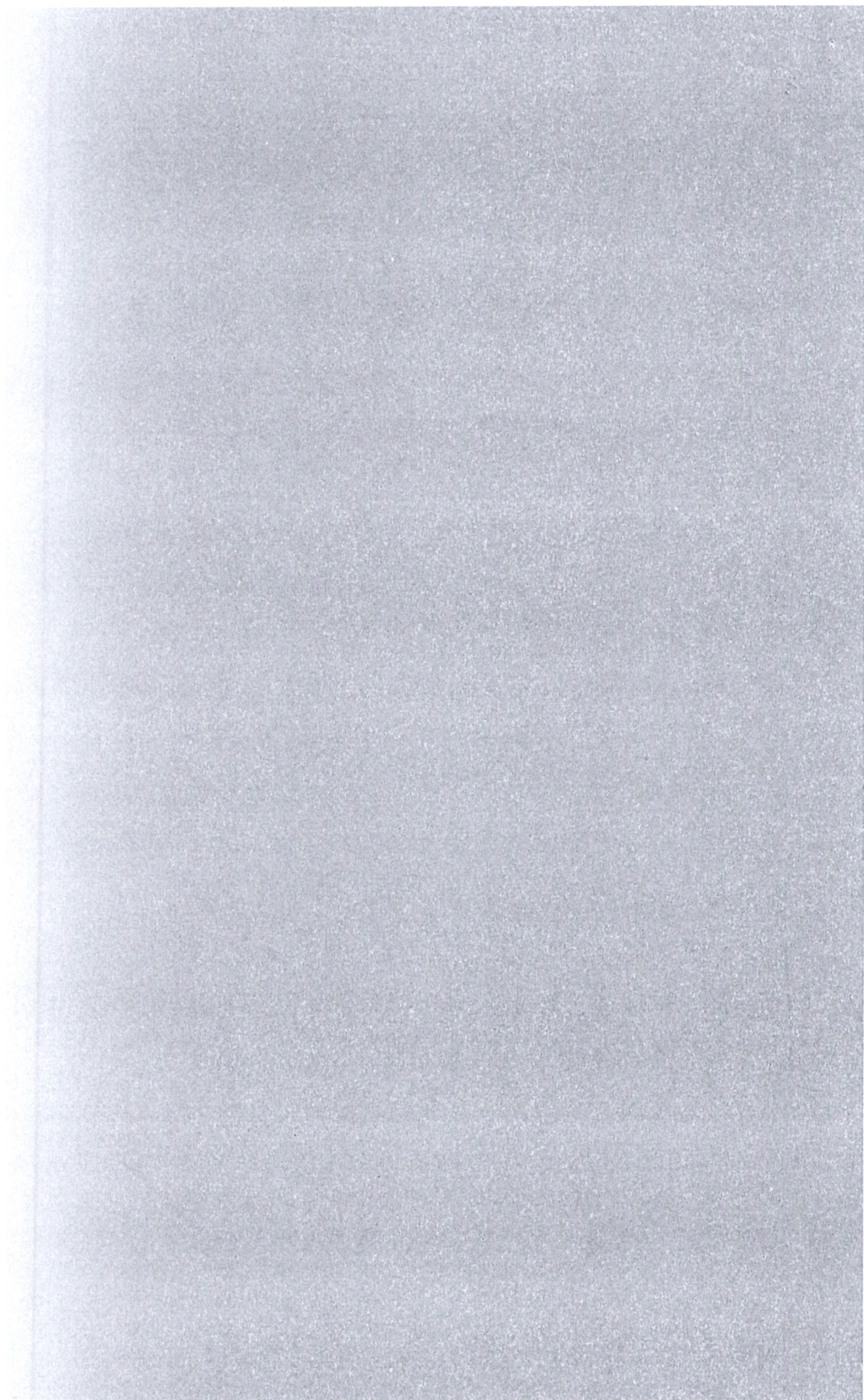
NATIONAL ASSEMBLY BILLS, 2022

NAIROBI, 16th November, 2022

CONTENT

Bill for Introduction into the National Assembly—	PAGE
The Penal Code (Amendment) Bill, 2022	1439





THE PENAL CODE (AMENDMENT) BILL, 2022

A Bill for

AN ACT of Parliament to amend the Penal Code

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Penal Code (Amendment) Act, 2022. Short title.
2. The Penal Code is amended by repealing section 182. Repeal of section
182 of Cap. 63.

MEMORANDUM OF OBJECTS AND REASONS**Statement of Objects and Reasons**

The principal object of the Bill is to amend the Penal Code Cap. 63 by repealing section 182 which prescribes the offence of idle and disorderly persons. The law enforcers have often used section 182 to harass innocent members of the public.

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

The Bill does not delegate legislative powers neither does it limit fundamental rights and freedoms.

Statement that the Bill does not concern County Governments

The Bill does not affect the functions of County Governments and is therefore not a Bill concerning counties for the purposes of Standing Orders.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

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

Dated the 10th November, 2022.

DAVID GIKARIA,
Member of Parliament.

Section 182 of Cap. 63 which the Bill proposes to amend—

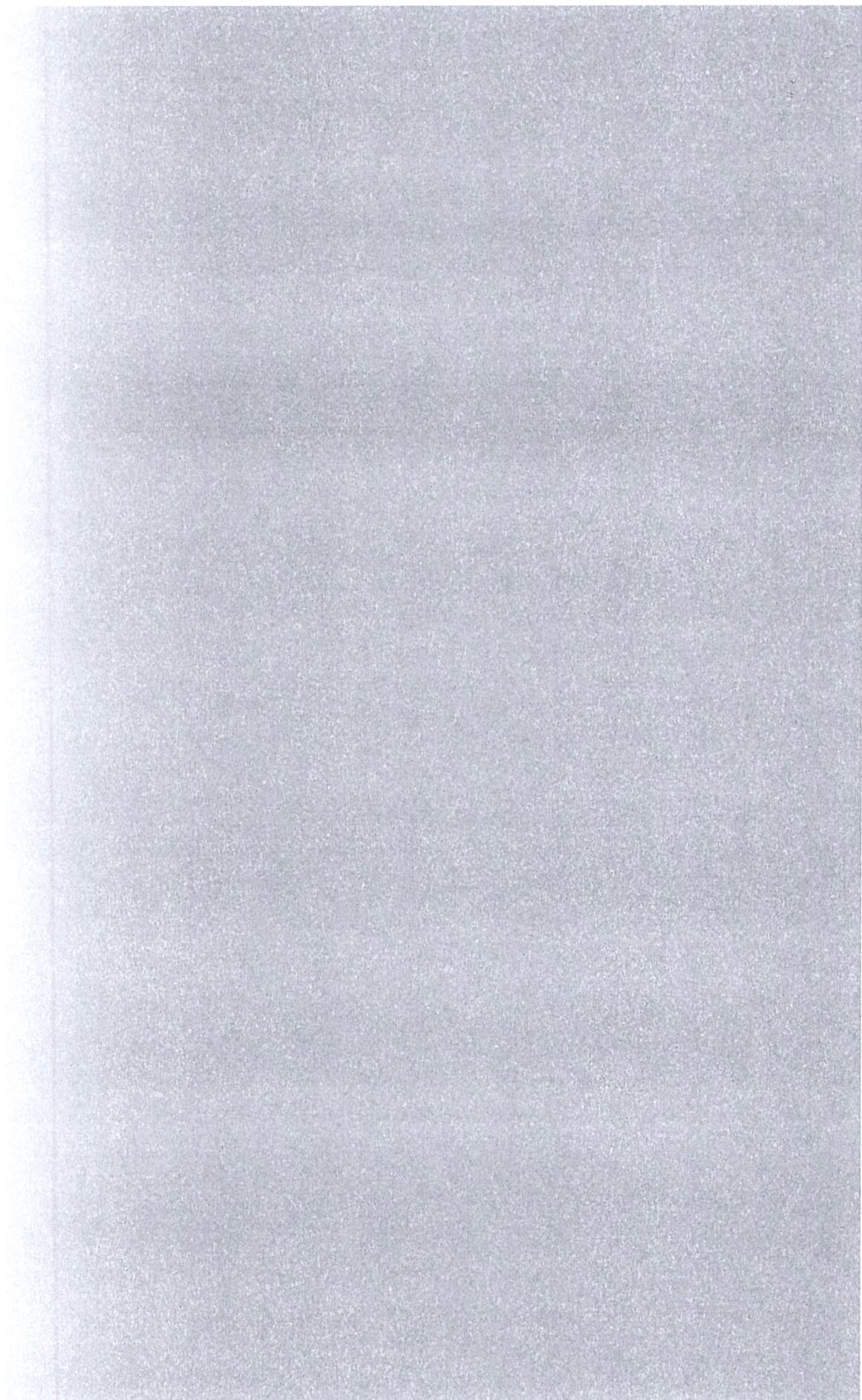
182. Idle and disorderly persons

The following persons—

- (a) every common prostitute behaving in a disorderly or indecent manner in any public place;
- (b) every person causing, procuring or encouraging any person to beg or gather alms;
- (c) *deleted by Act No. 61 of 1968, s. 22;*
- (d) every person who publicly conducts himself in a manner likely to cause a breach of the peace;
- (e) every person who without lawful excuse publicly does any indecent act;
- (f) every person who in any public place solicits for immoral purposes;
- (g) *deleted by Act No. 61 of 1968, s. 22,*

shall be deemed idle and disorderly persons, and are guilty of a misdemeanour and are liable for the first offence to imprisonment for one month or to a fine not exceeding one hundred shillings, or to both and for every subsequent offence to imprisonment for one year.

[Act No. 40 of 1952, Sch., Act No. 9 of 1966, s. 71, Act No. 24 of 1967, Sch., Act No. 61 of 1968, s. 22.]



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**Annexure 4: Advertisement
inviting the public to submit
memoranda on the Bill**



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT– SECOND SESSION

In the Matter of Article 118(1) (b) of the Constitution
and
In the Matter of Consideration by the National Assembly of:-

1. The Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022;
2. The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 62 of 2022);
3. The Public Service Internship Bill (National Assembly Bill No. 63 Of 2022); and
4. The National Rating Bill (National Assembly Bill No. 55 of 2022)

And further

In the Matter of Articles 2(5) & (6) and 118 (1) (b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012

And

In the Matter of Consideration by the National Assembly of the Minamata Convention on Mercury

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

A. BILLS

The Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the Bills listed below pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders.

1. **The Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022)** sponsored by Hon. David Gikaria, M.P. (Nakuru Town East).

The principal object of the Bill is to amend the Penal Code Cap. 63 by repealing section 182 which prescribes the offence of idle and disorderly persons. The law enforcers have often used section 182 to harass innocent members of the public.

2. **The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 62 of 2022)** sponsored by Hon. Benjamin Gathiru, M.P. (Embakasi Central).

The principal objective of the Bill is to amend the Public Procurement and Asset Disposal Act, 2015 to enhance the amount for tenders where Kenya citizens are given exclusive preference from the sum of five hundred million shillings to twenty billion shillings. This is to protect the Kenyan traders from foreign competitors.

3. **The Public Service Internship Bill (National Assembly Bill No. 63 Of 2022)**; Sponsored by Hon. Naisula Lesuuda, M.P. (Samburu West).

This is a Bill for an act of Parliament to make provision for internship of college and university graduates in the public sector: to provide hands-on training and acquisition of skills by graduates and for connected purposes.

4. **The National Rating Bill (National Assembly Bill No. 55 of 2022)** sponsored by Hon. Kimani Ichungw'a, MP (Leader of the Majority Party).

This is a Bill for an Act of Parliament to provide for comprehensive framework for imposition of rates on land and buildings by county governments; to provide for then valuation of rentable property; to provide for the appointment and powers of valuers; to provide for the establishment, powers and functions of the National Rating Tribunal and for connected purposes.

The Bills were Read a First Time on **Wednesday, 8th March, 2023** and Pursuant to Standing Order 127(1), committed to Departmental Committees of the National Assembly as set out in the schedule hereunder: -

SCHEDULE

No.	Bill	Committee
1.	The Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022)	Justice and Legal Affairs
2.	The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 62 Of 2022)	Finance and National Planning
3.	The Public Service Internship Bill (National Assembly Bill No. 63 Of 2022)	Labour
4.	The National Rating Bill (National Assembly Bill No. 55 of 2022)	Lands

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

B. CONVENTION

The **Minamata Convention on Mercury** was submitted to the National Assembly on 23rd February, 2023 and subsequently committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House in accordance with Section 8 of the Treaty Making and Ratification Act, 2012.

The **Minamata Convention on Mercury** seeks to protect human health and the environment from anthropogenic emissions and releases of mercury and its compounds.

Pursuant to Articles 2(5) & (6) and 118 (1)(b) of the Constitution the Departmental Committee on Environment, Forestry and Mining invites members of the public and relevant stakeholders to submit memoranda they may have on the **Minamata Convention on Mercury**.

The full text of the **Minamata Convention on Mercury** and its accompanying Memorandum to Parliament may be accessed at www.parliament.go.ke.

The memoranda should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to cna@parliament.go.ke; to be received on or before **Wednesday, 22nd March, 2023** at 5.00 p.m.

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
15th March, 2023

**Annexure 5: Letter from the
Clerk of the National
Assembly inviting relevant
stakeholders to submit
memoranda on the Bill**



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

Ref: NA/DDC/JLAC/2023/031

27th March 2023

Hon. Justin Muturi, EGH

The Attorney-General of the Republic of Kenya,
Sheria House, Harambee Avenue,
NAIROBI

Ms. Anne A. Amadi

Chief Registrar, Judiciary
Secretary/Chief Executive Officer
National Council on the Administrative of Justice
Mayfair Center, 5th Floor,
Ralph Bunche Road
NAIROBI

Mr. Noordin M. Haji, CBS, OGW

The Director of Public Prosecutions
ODPP House, Ragati Road,
Upper Hill
NAIROBI

Mr. Japhet Koome

Inspector General,
The Kenya Police Service,
Vigilance House
Harambee Avenue
NAIROBI

Mrs. Anne Makori

Chairperson,
Independent Policing Oversight Authority
ACK Garden Annex, 2nd Floor
1st Ngong Avenue
NAIROBI

Mr. Bernard Mogesa,

Chief Executive Officer,
Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lenana Road
NAIROBI

Mr. Joash Dache, MBS

Commission Secretary/CEO,
Kenya Law Reform Commission,
Reinsurance Plaza, 3rd Floor, Taifa Road,
NAIROBI

Dr. Annette Mbogoh

Executive Director
Kituo cha Sheria
Ole Odume Rd, Off Argwings Kodhek Rd
NAIROBI

Mr. Irungu Houghton

Executive Director,
Amnesty International,
Riverside Studios,
NAIROBI

Ms. Nancy Ikinu

Chairperson,
The Federation of Women Lawyers in Kenya
Amboseli Road off Gitanga Road, Lavington
NAIROBI

Ms. Elsy C. Sainna

Executive Director
International Commission of Jurists
ICJ Kenya House, Off Silanga Road, Karen
NAIROBI

Ms. Florence Muturi,

Chief Executive Officer
Law Society of Kenya (LSK)
Lavington, Opposite Valley Arcade, Gitanga Road
NAIROBI

Ms. Christine Gakii Nkonge,

Executive Director
Katiba Institute,
House No.5 -the Crescent-Off Parklands Road
NAIROBI

Ms. Caroline Gaita

Executive Director,
Mzalendo Trust
ACK Garden House, 2nd Floor, Wing A,
1st Ngong Avenue

Dr. Mshai Mwangola
Chairperson,
Uraia Trust
Jacaranda Avenue, off Gitanga Road
NAIROBI

Dear *Sir*

**RE: REQUEST FOR SUBMISSION ON THE PENAL CODE (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 56 OF 2022)**

The Departmental Committee on Justice and Legal Affairs is established pursuant to Standing Order 216 of the National Assembly Standing Orders, and is mandated to *inter alia*, “*study and review all legislation referred to it*”

On Wednesday, 8th March 2023, The Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022) (*copy attached*) introduced by **Hon. David Gikaria, MP** was read a First Time and committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House, pursuant to Standing Order 127(1).

The Bill seeks to amend the Penal Code Cap. 63 by repealing section 182 which prescribes the offence of idle and disorderly persons. The law enforcers have often used section 182 to harass innocent members of the public.

Pursuant to the provisions of Article 118 (1)(b) of the Constitution of Kenya and Standing Order 127(3), the Committee requests you to submit any comments and recommendations that you may have on the said Bill for consideration. The response should reach the office of the Clerk by Monday 3rd April, 2023. You may send a soft copy of the submission to cna@parliament.go.ke. The Bill can be accessed from the Parliamentary website at www.parliament.go.ke/the-national-assembly/house-business/bills.

Our Liaison Officers on this matter are **Mr. Douglas Katho** who may be contacted on tel. no. 0722333145 or email: douglas.katho@parliament.go.ke, **Mr. Clive Onyancha** on tel. 0725993500 or email: clive.onyancha@parliament.go.ke and **Ms. Jael Ayiego Kilaka** on tel. no. 0725385945 or email: jael.kilaka@parliament.go.ke

Yours, *Sincerely,*



SERAH KIOKO, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Encls

**Annexure 6: Letter from the
Clerk of the National
Assembly inviting relevant
stakeholders to attend the
public participation forum**



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

Ref: NA/DDC/JLAC/2023/039

25th April 2023

Hon. Justin Muturi, EGH

The Attorney General of the Republic of Kenya,
Sheria House, Harambee Avenue,
NAIROBI

Ms. Anne A. Amadi

Secretary,
National Council on the Administrative of Justice
Mayfair Center, 5th Floor,
Ralph Bunche Road
NAIROBI

Mr. Noordin M. Haji, CBS, OGW

The Director of Public Prosecutions
ODPP House, Ragati Road,
Upper Hill
NAIROBI

Dr. Annette Mbogoh

Executive Director
Kituo cha Sheria
Ole Odume Rd, Off Argwings Kodhek Rd
NAIROBI

Mr. Bernard Mogesa,
Chief Executive Officer,
Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lenana Road
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Mr. Irungu Houghton
Executive Director,
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Mr. Joash Dache, MBS
Commission Secretary/CEO,
Kenya Law Reform Commission,
Reinsurance Plaza, 3rd Floor, Taifa Road,
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Chairperson,
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Ms. Christine Gakii Nkonge,
Executive Director
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Mr. Japhet Koome
Inspector General,
The Kenya Police Service,
Vigilance House
Harambee Avenue
NAIROBI

Mrs. Anne Makori
Chairperson,
Independent Policing Oversight Authority
ACK Garden Annex, 2nd Floor
1st Ngong Avenue
NAIROBI

Ms. Caroline Gaita
Executive Director,
Mzalendo Trust
ACK Garden House, 2nd Floor, Wing A,
1st Ngong Avenue
NAIROBI

Dr. Mshai Mwangola
Chairperson,
Uraia Trust
Jacaranda Avenue, off Gitanga Road
NAIROBI

Dear *Mr. Mogesa,*

**RE: INVITATION TO SUBMIT VIEWS ON THE PENAL CODE (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL NO. 56 OF 2022)**

The above matter refers.

The Departmental Committee on Justice and Legal Affairs is established pursuant to National Assembly Standing Order 216 and is mandated to *inter alia*, “**study and review all legislation referred to it**”

On Wednesday, 8th March 2023, The Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022) (*copy attached*) sponsored by **Hon. David Gikaria, MP** was read a First Time in the House and committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House, pursuant to Standing Order 127(1).

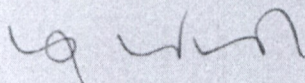
Article 118(1)(b) of the Constitution of Kenya and Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. Due to the tremendous public interest in the Bill, the Committee has resolved to meet critical stakeholders to make their submissions on the Bill.

This is therefore to invite you to a meeting with the Committee on **Thursday, 4th May 2023**. The meeting will be held in Nairobi County or its environs, the venue and time of which will be communicated in due course.

You are requested to prepare your written submissions in a matrix format that indicates the section of the Act, specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions are to be availed at the meeting, while soft copies should be emailed to cna@parliament.go.ke a day before the meeting.

Our Liaison Officers on this matter are **Mr. Douglas Katho** who may be contacted on tel. no. **0722333145** or email: douglas.katho@parliament.go.ke, **Ms. Jael Ayiego Kilaka**, tel. no. **0725385945** or email: jael.kilaka@parliament.go.ke and **Mr. Abdikafar Abdi Sheikh** tel. no. **0715456503** or email: abdikafar.sheikh@parliament.go.ke

Yours, *Sincerely,*



PETER K. CHEMWENO

For: CLERK OF THE NATIONAL ASSEMBLY

Encls

Annexure 7: Memoranda **by**
Stakeholders



REPUBLIC OF KENYA

**OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF
JUSTICE**

MEMORANDUM

**IN RESPONSE TO THE INVITATION OF THE DEPARTMENTAL
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO MAKE
SUBMISSIONS ON THE PENAL CODE (AMENDMENT) BILL, 2022**

3RD MAY 2023

Reference is made to the letter from the Clerk of the National Assembly dated 25th April 2023 and referenced NA/DDC/JLAC/2023/039 requesting the Office of the Attorney-General to appear before the Departmental Committee on Justice and Legal Affairs and make submissions on Penal Code (Amendment) Bill, 2022.

The Bill seeks to repeal section 182 of the Penal Code which prescribes the offence of idle and disorderly persons.

Section 182 of the Penal Code provides as follows—

The following persons—

- a) every common prostitute behaving in a disorderly or indecent manner in any public place;
- b) every person causing, procuring or encouraging any person to beg or gather alms;
- c) deleted by Act No. 61 of 1968, s. 22;
- (d) every person who publicly conducts himself in a manner likely to cause a breach of the peace;
- (e) every person who without lawful excuse publicly does any indecent act;
- (f) every person who in any public place solicits for immoral purposes;

shall be deemed idle and disorderly persons, and are guilty of a misdemeanor and are liable for the first offence to imprisonment for one month or to a fine not exceeding one hundred shillings, or to both and for every subsequent offence to imprisonment for one year.

The intention of section 182 is to safeguard order in public places.

Section 182 (a) prohibits common prostitutes from behaving in a disorderly or indecent manner in any public place. This provision is discriminatory because it specifically targets prostitutes yet other people could also behave in a disorderly or indecent manner. Furthermore, paragraph (e) and (f) prohibit commission of indecent acts in public places and soliciting for immoral purposes, and therefore renders the provision redundant.

Section 182 (d) prohibits a person from publicly conducting himself in a manner likely to cause a breach of the peace. This provision is not necessary because there

are other provisions in the Penal Code that provide for breach of peace. Section 94 of the Penal Code provides for the offence of Offensive conduct conducive to breaches of the peace. It provides that any person who in a public place or at a public gathering uses threatening, abusive or insulting words or behavior with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned is guilty of an offence. Section 95 of the Penal Code also provides for the offence of threatening breach of the peace or violence. It provides that any person who uses obscene, abusive or insulting language, to his employer or to any person placed in authority over him by his employer, in such a manner as is likely to cause a breach of the peace or brawls or in any other manner creates a disturbance in such a manner as is likely to cause a breach of the peace is guilty of a misdemeanor. Section 94 and 95 adequately deal with the offences relating to breach of peace thereby rendering section 182(d) unnecessary.

Section 182 (e) prohibits a person from doing an indecent act. The phrase “indecent act” is not defined in the Act. This gives the law enforcers the discretion to interpret what amounts to an indecent act, thereby causing uncertainty in the law. In the absence of a clear definition of what amounts to an indecent act, section 182 (c) is vague and lacks clarity.

Section 182 (f) prohibits a person who is in any public place from soliciting for immoral purposes. Section 153(1) (b) of the Penal Code provides for the offence of male person living on earnings of prostitution or soliciting. It provides that every male person who in any public place persistently solicits or importunes for immoral purposes is guilty of a felony. The Offence in section 182(a) is adequately provided for in section 153 and there is therefore no need of having the same offence provided for with conflicting penalties.

In light of the foregoing, the provisions of section 182 are not necessary as the prohibitions are already comprehensively provided for in other sections of the Penal Code and the penalties provided for similar offences conflict. The proposal to repeal section 182 is valid and it will help to eradicate ambiguity in the law.



MARY KITEGI
PRINCIPAL PARLIAMENTARY COUNSEL
FOR ATTORNEY GENERAL

3rd May, 2023

CONFIDENTIAL



**OFFICE OF THE INSPECTOR GENERAL
NATIONAL POLICE SERVICE
NAIROBI – KENYA**

Telegraphic Address: "IG, NPS"
Telephone: Nairobi 020-2221969
When replying please quote Ref.
No. and Date

Jogoo House 'A'
4th Floor
P O Box 44249-00100
NAIROBI

NPS/IG/SEC/2/6/13/8/VOL.XV/(23)

3rd May, 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
Main Parliament Building
P O Box 41842 - 00100
NAIROBI

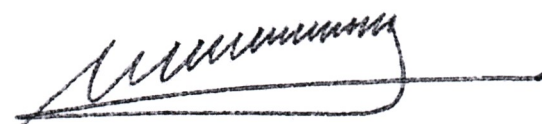
**INVITATION TO SUBMIT VIEWS ON THE PENAL CODE (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.56 OF 2022)**

The Office of the Inspector General acknowledges receipt of your communication vide letter Ref: NA/DDC/JLA/2023/039 dated 25th April, 2023 on the aforementioned subject matter

You had invited the Inspector General to attend a meeting with the Departmental Committee on Justice and Legal Affairs on **Thursday 4th May, 2023**. However, the Inspector General is out of the country, thus will not be available for the meeting.

In this regard, we have nominated **Mr. Charles Ismael Otiemo Otiende, SP** to attend the meeting and present the views in regard to the National Assembly Bill No.56 of 2022.

Please accept the assurance of our highest consideration.



NOOR Y. GABOW, CBS, OGW
Ag. INSPECTOR GENERAL
NATIONAL POLICE SERVICE

CONFIDENTIAL

SUBMISSION ON PENAL CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 56 OF 2022)

S/NO	SECTION	SUB-SECTION	COMMENTS	RECOMMENDATIONS & JUSTIFICATIONS
1.	182	(a) Every common prostitute behaving in a disorderly or indecent manner in any public place.	To remain in force	<p>The sub section helps in [promoting decency and reducing moral decay of the Society, curbing Crimes under Section 230 of the Penal Code and in reducing STIs e.g. HIV and AIDS in the society.</p> <p>Punishment be enhanced to imprisonment for a term not exceeding three months or to a fine not exceeding three thousands shillings or to both.</p>
2.		(b) Every person causing, procuring or encouraging any person to beg or gather alms	To remain in force	<p>The sub section aids in discouraging laziness and idleness in the Society and curbs the misuse of the vulnerable group in the Society such as persons living with disabilities.</p> <p>Punishment be enhanced to</p>

			imprisonment for a term not exceeding one year or a fine of ten thousands shillings or to both.
3.	(d) Every person who publicly conducts himself in a manner likely to cause a breach of the peace.	Be made a stand-alone section of the Penal Code	The arrest and prosecution of idle and disorderly persons assists in reducing crime in the society and deterrence of criminals. In most cases minor offences lead to serious offences. Punishment to imprisonment of a term not exceeding 3 years or a fine of five thousands shillings or to both.
4.	(e) Every person who without lawful excuse publicly does any indecent Act.	Be deleted from section 182	The offence be moved to Sexual Offences Act which has a similar provision.
5.	(f) Every person who in any public place solicits for immoral purposes	To remain in force	This sub-section advocates for moral uprightness/behavior among the citizens especially in public places. Repealing this section will encourage immoral acts and this will lead to anarchy and breed a generation that is not morally

				<p>upright. This will also bring disorder and lawlessness among the people</p> <p>Punishment be enhanced to imprisonment for a term not exceeding 5 years or to a fine ten thousands shillings or to both.</p>
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In conclusion, it is recommended that Section 182 be retained as the Service applies the Section within the provisions of the law in order to maintain law and order in the society and this should not be misconstrued to amount to harassment. Additionally, the Service releases suspects on bail and bond as per the provisions of Article 49 of the Constitution if the conditions stipulated by the law are met.

THE PENAL CODE (AMENDMENT) BILL

IN SUPPORT OF THE PROPOSED AMENDMENT

Submission to:
THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
Submission by
Dr. Mwangola
Chair, Uraia Board of Trustees

Section	Clause	Proposed Amendment	Justification
182	(a)	Repeal	<p>The clause, having not defined what constitutes a “disorderly or indecent manner”, is vague; leaving it up to the subjective determination of the arresting officer to determine what threshold constitutes this. Neither does it specify how an officer is to determine that a party is a “common prostitute”. In the past, this has been used to harass women in particular.</p> <p>The Sexual Offences Act (No. 3 of 2006) already deals with matters of prostitution.</p>
182	(b)	Repeal	<p>This clause criminalises the giving or receiving of alms which can be a religious or cultural practice, by defining anyone engaging in alm-giving or receiving as “idle and disorderly”.</p> <p>It also criminalises poverty by equating those who request or receive alms with idleness and disorderliness.</p>
182	(d)	Repeal	<p>The phrase “a manner likely to cause a breach of peace” is vague, leaving it to the subjective determination of the arresting officer regarding what is “likely to” without providing any indication as to the threshold that determines the point at which a breach of peace (and in what way that might be defined) is likely to occur</p> <p>This has created a loophole for abuse, having been deployed in the past to prevent citizens and other persons from exercising their human rights such as the right to picket and the freedom of expression, which are enshrined in the Constitution of Kenya.</p>
182	(e)	Repeal	<p>The clause is vague in that the following would need elaboration:</p> <p>(i) “without lawful excuse”; this phrase implies that there are public acts of indecency that are permissible, but does not indicate who determines what such lawful excuses are that sanction such acts;</p> <p>(ii) leaves to the subjective judgement of an arresting officer what constitutes “indecency” and therefore is open to abuse.</p> <p>The Sexual Offences Act(No. 3. Of 2006) deals more comprehensively with matters of indecent acts.</p>

MZALENDO

3rd April 2023.

**Clerk of the National Assembly,
Parliament Buildings,
P.O Box 41842-
00100, NAIROBI.**

Our Ref: MZ/NA/JLAC/01/23

Your Ref: NA/DDC/JLAC/2023/031

RE: Memorandum on the Penal Code (Amendment) Bill, 2022

Mzalendo ('Patriot' in Swahili) Trust is a Kenyan non-partisan Parliamentary Monitoring Organization started in 2005 and whose mission is to '*promote open, inclusive, and accountable Parliaments in Kenya and Africa.*' We do so by creating and managing civic tech tools, producing evidence-based research, and leading and facilitating advocacy and partnerships with Parliaments, citizens, and other relevant stakeholders. We believe that success in our work will build more effective and responsive legislation and political processes that ultimately support Kenya's national development goals. In line with our Strategic Plan 2021-2025, we anchor our work on three main pillars: Openness, Inclusion, and Accountability.

In addition, Mzalendo Trust convenes various networks and collaboration initiatives to facilitate engagement in the legislative process. Key among this is the Civil Society Parliamentary Engagement Network (CSPEN), a network of about 28 organizations with an interest in working in Parliament. In addition, Mzalendo is also the Convenor of the CSO partners within the Open Government Partnership framework and the lead for the Public Participation and Legislative Openness Commitment as articulated in the 4th National Action Plan currently under implementation.

2

The Bill seeks to amend the **Penal Code** Cap. 63 by repealing section 182 which prescribes the offence of idle and disorderly persons.

The proposed repeal is welcome as it seeks to align the Penal Code to the Constitution of Kenya, especially on Articles 10, 27, 28 and 49. The proposed repeal is also aligned with Article 9(1) of the International Convention on Civil and Political Rights, which Kenya has ratified, which prohibits arbitrary arrest and detention.

The phrasing of the section was vague and gave room for misinterpretation and abuse through arbitrary arrests, harassment and unreasonable bail terms for Kenyans. It also stemmed from colonial laws that were aimed at subjugation of Kenyans at the time to criminalize unemployment, poverty and homelessness which is in contravention of Article 27(4) of the Constitution of Kenya, 2010.

The section targets the status of persons and not their behavior, as they are victimless crimes and often, no injury or danger is caused to persons or public in general. The section does not also provide a measure of what constitutes disorderly, leaving it at the discretion of police who misuse it.

The High Court in *Anthony Njenga Mbuli & 5 others v Attorney General (2014)*, held that the conduct by law enforcement officers profiling suspects on mere suspicion, arresting and detaining them with no evidence of crime committed is arbitrary and discriminatory and in contravention of our Constitution.

Further, in *Mohamed Feisal & 19 others v Henry Kandie & others [2018] eKLR*, the Court emphasized that reasonableness and rationality of the decisions to arrest where deprivation of individual liberty of a person should be consistent with the Constitution and international standards in upholding the rights of an individual.

From the foregoing, it is clear that section 182 of the Penal code is outdated, vague, and allows for misuse in its application thereby

		leading to violation of the constitutional rights of individuals. The section is also in contravention of the Constitution of Kenya 2010 and other international standards. The proposed repeal is therefore timely and appropriate.
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We hope our proposals will be considered during the deliberations of the Bill.

Sincerely,



**Caroline Gaita,
Executive Director.**

D/DC
Please deal
05/04/23

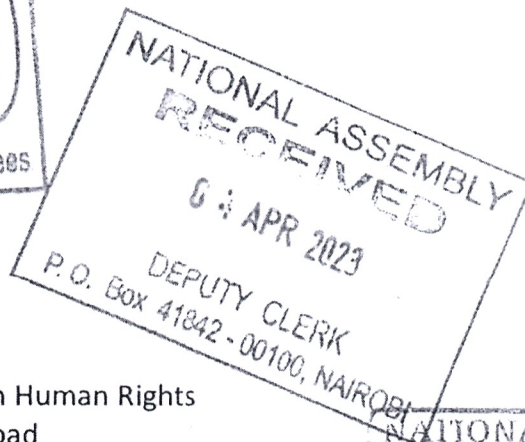
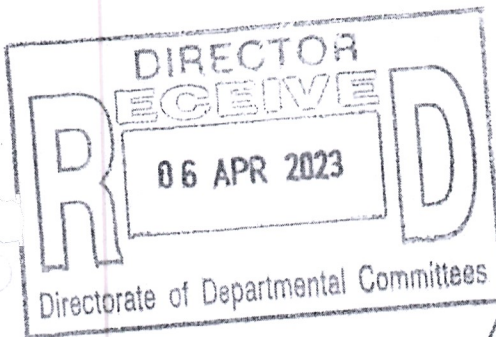


KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

ADVISORY ON THE PENAL CODE (AMENDMENT) BILL, 2022

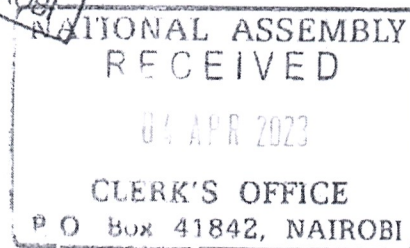
PRESENTED TO

**THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS**



3RD APRIL, 2023

Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lenana Road
P.O. Box 74359-00200
NAIROBI, KENYA
Tel: 254-20-2717908 /2717256/2712664
Fax: 254-20-2716160
Website: www.knchr.org



A. INTRODUCTION

1. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution with a broad mandate to promote a culture of respect of human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the United Nations *Paris Principles* on the establishment and functioning of independent national human rights institutions commonly referred to as the Paris Principles and as such enjoys an “A” status accreditation.
2. The National Commission under **Article 249** of the Constitution has a mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the Constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through the issuance of advisories.
3. It is in this regard, that the National Commission issues this advisory on the Penal Code (Amendment) Bill, 2022; National Assembly Bills No. 56. Sponsored by Hon. David Gikaria, the Bill seeks to amend the Penal Code to repeal section 182 that prescribes the offence of idle and disorderly persons.

B. GENERAL COMMENTS

4. The Commission welcomes the proposed repeal of section 182 of the Penal Code which provides for the offence of idle and disorderly persons. The amendment is in line with the efforts of the National Committee on Criminal Justice Reforms to decriminalize petty offences and will, inter alia, decongest the prisons, reduce backlog of cases in court and reduce human rights violations to the suspected perpetrators.
5. Globally, criminalization of petty offences, such as loitering, vagrancy, begging, drug user, sex workers, informal traders and ‘breach of peace’ offences, exacerbate already overburdened criminal justice systems and overcrowd prisons. In Africa, petty offences can be traced back to colonial era when they were used to control movement of the people in Africa. By their very nature, provisions that criminalise petty offences are vague and arbitrarily and unfairly applied, targeting mostly the poor and the marginalised groups, thus reinforcing discrimination and social exclusion.

6. The proposed repeal is in line with the recommendation of the African Commission. During the 63rd Ordinary Session in October 2018, the African Commission on Human and Peoples' Rights ('African Commission') adopted the *Principles on the Decriminalisation of Petty Offences in Africa*. The African Commission was concerned that certain categories of people, including those who are poor or who otherwise experience social exclusion, are unfairly targeted by petty offences, which threatens their enjoyment of human rights in the criminal justice system. In particular, the African Commission was concerned that the existence and enforcement of petty offences violate/threaten violation of Articles 2, 3, 5 and 6 of the African Charter on Human and Peoples' Rights which guarantee all persons, without distinction of any kind, the right to equality before the law and to equal protection of the law, the right to inherent dignity, protection from ill-treatment and the right to freedom from arbitrary arrest and detention.
7. According to the African Commission's *Principles on Decriminalisation of Petty Offences in Africa*:¹
- Petty offences discriminate against people on the basis that they are poor, are vulnerable, are part of a key population, or on account of their gender, age or disability.
 - The offences are used to punish, keep separate, control and negatively affect the dignity of people because of one or more aspects of who they are.
 - People living in poverty are at high risk of being arrested for a petty offence because they perform life-sustaining activities in public places.
 - By arresting and detaining people for petty offences, African countries reinforce the idea that people unfairly targeted by these laws are not respected and do not have the same right to dignity as other people.
 - Sanctions imposed for petty offences can affect a person's dignity, and can cause people to experience ill-treatment. This is because when people are arrested and detained for petty offences, they are often sent to a police station or prison that is overcrowded. The African Commission has stated that overcrowding in detention is one form of ill-treatment. Furthermore, that when law enforcement organs make mass arrests of people for the purpose of enforcing petty offences (e.g. through sweeping or swooping exercises that result in the arrest of all street children in a particular area), this is a form of ill-treatment.

¹ See A Simplified Version of the Principles on Decriminalisation of Petty Offences in Africa at <https://apcof.org/wp-content/uploads/apcof-simplified-dpo-a2-poster-eng.pdf>. Full version accessible here <https://decrimpovertystatus.org/?resources=principles-on-the-declassification-and-decriminalization-of-petty-offences-in-africa>.

8. In view of the foregoing, the African Commission advises African Countries *inter alia* to:
- Decriminalise certain petty offences.
 - Provide alternatives to arrest for petty offences that are not decriminalised.
 - Address the root causes of poverty and other forms of marginalisation rather than criminalising activities that are caused by poverty and marginalisation.
 - Further applying the Principles by: (a) reviewing all existing petty offences to ensure that they are consistent with the Principles; (b) ensuring that all people have access to a lawyer; (c) making the Principles available to all people; (d) training the police and the courts with regard to these Principles; (e) reporting to the African Commission on whether their petty offences are consistent with the Principles; (f) collecting data and other information on the enforcement of petty offences; and (g) cooperating and sharing best practices on the decriminalisation of petty offences with the African Commission and as part of reporting under the Sustainable Development Goals.

Other considerations in Penal Code review

9. KNCHR notes that the Statute Miscellaneous (Amendments) Bill, 2022 seeks to amend Section 146 of the Penal Code in terms of deleting the derogatory terms and replacing them with the term persons with mental illness. The Commission proposes that the amendment contained in the Statute Law Miscellaneous (Amendments) Bill, 2022 be exported to the Penal Code (Amendment) Bill, 2022 for purposes of uniformity. The Commission has recently separately submitted an advisory on this Bill to the Committee.
10. In addition, the Commission proposes to include repeal of section 226 of the Penal Code which provides for the offence of attempting suicide, a misdemeanor punishable by imprisonment for a term not exceeding two years, or a fine or both.
11. The Commission opines that punishment of persons with mental health conditions by criminalization of attempted suicide is tantamount to discrimination against persons with disabilities and is contrary to the constitutional requirements on the right of persons to the highest attainable standard of healthcare under Article 43 of the Constitution of Kenya, the right to equality before the law and non-discrimination on the basis of health status and disability under Article 27 of the Constitution; the right to human dignity under Article 28; the rights of persons with disabilities as protected in Article 54; and the protection of the best interest of the child as well as the rights of the child recognized in Article 55 of the Constitution.

SIGNED BY:

A handwritten signature in black ink, appearing to read 'Dr. Bernard Mogesa', with a long horizontal flourish underneath.

Dr. Bernard Mogesa, PhD, CPM

Commission Secretary/CEO

Telephone Nairobi 2221221
Email: chiefregistrar@court.go.ke



CHIEF REGISTRAR'S CHAMBERS, JUDICIARY
SUPREME COURT BUILDING
P.O. Box 30041 - 00100
NAIROBI

When replying please quote

Ref: CRJ/23

THE JUDICIARY

27th April 2023

Your Ref: NA/DDC/JLAC/2023/031

Samuel Njoroge
Clerk of the National Assembly
Clerk's Chambers, Main Parliament Buildings
NAIROBI

Dear Sir,

RE: COMMENTS ON THE PENAL CODE (AMENDMENT) BILL (NA BILL NO. 56 OF 2022)

We acknowledge, with gratitude, your letter dated 27th March 2023 inviting comments on the above referenced Bill.

We have noted that the Bill proposes to repeal Section 182 of the Penal Code which prescribes the offence of idle and disorderly persons.

Through its Committee on Criminal Justice Reforms, the National Council on the Administration of Justice (NCAJ) has reviewed the Penal Code and has noted that it has several petty offences that should be decriminalized.

We therefore support the proposed repeal of Section 182 of the Code. We note, however, that this section also makes it a crime to cause, procure or encourage any person to beg or gather alms

There is a troubling practice in urban areas where children are encouraged to beg on the streets by their parents, guardians or caregivers and – in some cases – by persons who traffic them across borders to beg in Kenyan towns. A total repeal of this section would result in a gap in the punishment of such persons and we urge Parliament to reconsider the proposal.

We also urge Parliament to undertake a more comprehensive review of the Penal Code to repeal other petty offences.

Yours Sincerely,

ANNE A. AMADI, CBS
CHIEF REGISTRAR OF THE JUDICIARY &
SECRETARY, NATIONAL COUNCIL ON THE ADMINISTRATION OF JUSTICE

Copy To: Hon. Lady Justice Grace Ngenye
Judge of Appeal & Chairperson,
NCAJ Committee on Criminal Justice Reforms

DIRECTOR
SECRETARIAL

03 MAY 2023

NATIONAL ASSEMBLY
RECEIVED

POC-Hon
8
2/05
Douglas Katho
pls facilitate
by WCA 3/5/23

KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

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

When replying please quote:

Ref. No. KLRC/RES/93
and Date



KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
3RD FLOOR
TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

D/DC
Please deal
05/04/23

3rd April, 2023

Joseph Kaito
Deal
06/04

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

(Attn. Ms. Serah Kioko, MBS)

Dear Serah,

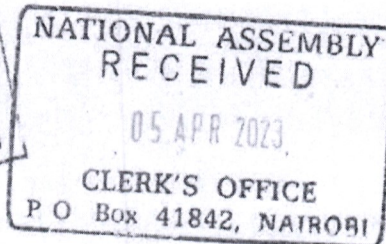
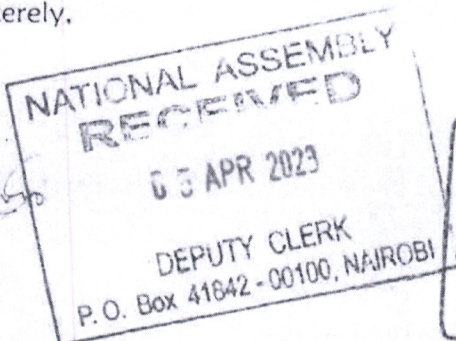
RE: REQUEST FOR SUBMISSION ON THE PENAL CODE (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.56 OF 2022)

Please refer to the above subject and your letter Ref.No.NA/DDC/JLAC/2023/031 dated 27th March, 2023.

Enclosed herein please find the Commission's Comments on the Penal Code (Amendment) Bill (National Assembly Bill No.56 Of 2022) for further action.

As always, we want to thank you for your continued support and cooperation.

Yours Sincerely,



Joash Dache, MBS
SECRETARY/CEO



THE KLRC COMMENTS ON THE PENAL CODE (AMENDMENT) BILL, 2022

I. INTRODUCTION

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

The Kenya Law Reform Commission (KLRC) is in receipt of a letter from the National Assembly dated 27 March 2023 (ref: NA/DDC/JLAC/2023/031) seeking its comments on the Penal Code (Amendment) Bill, 2022. The Bill seeks to amend the Penal Code, Cap. 63 (the Act) by repealing section 182 which prescribes the offence of idle and disorderly persons on the ground that the law enforcers have often used the provision to harass innocent members of the public.

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

II. ANALYSIS

Kenya is one of the few African countries that were under the British colonial rule that maintain vagrancy provisions in the Penal Code. The offending provision was last amended by section 22 of the Vagrancy Act, No. 61 of 1968 (which was later repealed by the Statute Law (Repeals and Miscellaneous Amendments) Act, No. 10 of 1997). It follows that as the Act that introduced some of these petty offences has since been repealed, this section and other similar ones should also be repealed.

The reform of vagrancy offences has been raised a number of times including:

1. In 2016, National Council on Administration of Justice (NCAJ), in collaboration with Legal Resources Foundation Trust and the Resources Oriented Development Initiatives, conducted an audit of the criminal justice system in Kenya. The audit found that the criminal justice system was skewed against the poor and that more poor people than rich people were arrested, charged, convicted and sent to prison. It also recommended administrative,

institutional and legislative reforms in order to align the justice system with the Constitution.¹

2. The High Court in Constitutional Petition No. 14 of 2007 also stated as follows:

*"I do not know how one can criminalize idleness. Gone are the days when the marginalised members of our society were bundled into police cells under this rubric of offences, incapable of constituting any criminal elements. One wonders the sustainability of the offence of being idle and disorderly in our statute books save for the reason of being a fertile provision for the police to use it as a tool to infringe and or violate the right to equality and non-discrimination under Article 27 of the Constitution. Undoubtedly, none of the middle income or economically advantaged class of our society finds himself or herself being arrested or indicted with these kind of offences."*²

3. On 02 December 2022, the Constitutional Court in Uganda nullified the Penal Code section that created a similar offence.³ The five-judge bench nullified the section because it infringed on a number of constitutional provisions.
4. In December 2020, the African Court on Human and Peoples' Rights gave an Advisory Opinion which places an obligation on all States in Africa to review their criminal laws.⁴ This review should also apply in other regions with similar colonial legacies.

III. RECOMMENDATION

In view of the foregoing, KLRC is in agreement that the section should be repealed. Further, KLRC continues to propose the reform of various laws including the Penal Code.

We conclude by stating that we are committed to ensuring that legislation is drafted to the highest standards possible to promote their legal effectiveness, clarity and intelligibility to anticipated users.

¹ Criminal Justice System in Kenya: An Audit pg. xxiv.

² Kajiado Constitutional Petition No. 14 of 2017 (Formerly Nairobi High Court Petition 533 of 2016) Mohamed Feisal & 19 Others v Henry Kandie, Chief Inspector of Police, OCS, Ongata Rongai Police Station & 7 Others.

³ Constitutional Petition No. 36 of 2018 Francis Tumwesige Ateenyi v Attorney-General.

⁴ African Commission on Human & Peoples' Rights, Principles on the Decriminalisation of Petty Offences, (2017).

D/DC

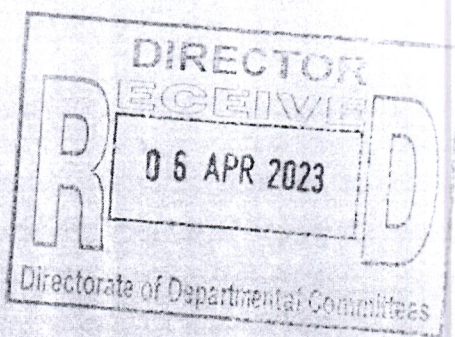
Please deal

06/04/23

URGENT



OFFICE OF THE INSPECTOR GENERAL
NATIONAL POLICE SERVICE
NAIROBI - KENYA



Telegraphic Address: "IG, NPS"
Telephone: Nairobi 020-2221969
When replying please quote

Jogoo House 'A'
P O Box 44249 - 00100
NAIROBI

NPS/IG/SEC/2/6/13/8/VOL.XIV/69

6th April, 2023

Clerk of the National Assembly
Main Parliament Buildings
P. O. Box 41842-00100
NAIROBI

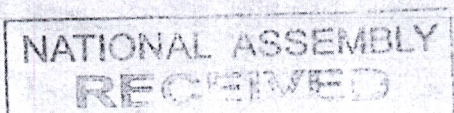
Philip Akaraka
pls facilitate consideration
6/4/23

REQUEST FOR SUBMISSION ON THE PENAL CODE (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 56 OF 2022)

Reference is made to your letter ref. NA/DDC/JLAC/2023/031 dated 27th March, 2023 on the above subject.

Below are the submissions of National Police Service in respect of the proposed amendment:

- Criminal law through the Penal Code provides a framework with which to guide citizens' behavior. Section 182 prohibits conduct that causes or threatens public interest, defines and warns people of criminality of the offensive conduct and further classifies the offences under the section as minor and imposes punishment to protect the society and promotes retribution and deterrence.
- The Section complements Sections 29 and 62 of the Criminal Procedure Code on Cognizable offences and the preventive mandate of the Police.
- Prostitution in Kenya has not been criminalized thus the amendment of section 182(a) may imply its legalization.



- That Section **182(b)** acts as deterrence to begging on the streets and its amendment will attract more beggars as it is clear that these days many make a living out of it and if not checked will result in public nuisance. Further, it is within public knowledge that the number begging on the streets of Nairobi and other parts of the country has increased significantly with some being trafficked from neighboring countries. The perpetrators of these crimes will therefore walk free if the proposed amendment is passed as law enforcement officers will have no legal basis to arrest the persons behind these crimes.
- Sub-sections **(d)**, **(e)** and **(f)**, of the said section promote and uphold the social and moral fiber of the Kenyan society therefore absence of an alternative provision that criminalizes acts as indicated in these sub-sections will be tantamount to encouraging public immorality at the expense of individual rights to moral dignity. A reading of these sub-sections reveals the intention of the legislature and by extension the people of Kenya to pursue and maintain public decency, peace, public order and to promote public morality.

In light of the foregoing, the National Police Service registers its reservations to the intended amendment and submits the considered view that the provision should be retained for the purpose of preservation of public morality and order and in the context of public interest.

Handwritten:
Joanne Korir
For: INSPECTOR GENERAL
NATIONAL POLICE SERVICE



D/D e
Please deal
Goli



17/04/23

IPOA/CEO/BOD/1 VOL. V

12th April 2023

The Clerk
The National Assembly
P.O. Box 41842 - 00100
NAIROBI

Josias Kato
pls facilitate
17/4/23

Att: Serah Kioko, MBS

**REQUEST FOR SUBMISSION ON THE PENAL CODE (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 56 OF 2022)**

Reference is made to letter Ref. No.NA/DDC/JLAC/2023/031 dated 27th March 2023 on the subject matter.

Attached please find IPOA's submission in the mater of the Penal Code (Amendment) Bill, National Assembly Bill No. 56 of 2022 for consideration.

Yours Sincerely,

**ANNE MAKORI, (Mrs), EBS
CHAIRPERSON**

NATIONAL ASSEMBLY
RECEIVED
12 APR 2023
DEPUTY CLERK
P.O. Box 41842 - 00100, NAIROBI

NATIONAL ASSEMBLY
RECEIVED
12 APR 2023
CLERK'S OFFICE
P.O. Box 41842, NAIROBI



Independent Policing Oversight Authority

The Independent Policing Oversight Authority's submission to the National Assembly Departmental Committee on Justice and Legal Affairs in the matter of The Penal Code (Amendment) Bill, (National Assembly Bill No. 56 Of 2022)

Dated: 04.04.2023

CLASSIFICATION: GENERAL

1. Background on decriminalization of Petty offences

"Section 182 of the Penal Code provides as follows;

Idle and disorderly persons

The following persons –

(a) every common prostitute behaving in a disorderly or indecent manner in any public place;

(b) every person causing, procuring or encouraging any person to beg or gather alms;

(c) deleted by Act No. 61 of 1968, s. 22;

(d) every person who publicly conducts himself in a manner likely to cause a breach of the peace;

(e) every person who without lawful excuse publicly does any indecent act;

(f) every person who in any public place solicits for immoral purposes;

(g) deleted by Act No. 61 of 1968, s. 22, shall be deemed idle and disorderly persons, and are guilty of a misdemeanor and are liable for the first offence to imprisonment for one month or to a fine not exceeding one hundred shillings, or to both and for every subsequent offence to imprisonment for one year"

The provision creates what is referred to as a petty offence.

The term "petty offence" is not expressly defined in Kenya's statute books, including the Constitution, the Penal Code and the Criminal Procedure Code. The closest similarity it bears to any offense defined in the Penal Code is the law about misdemeanour, which is simply defined as any offense that is not a felony.¹ The Penal Code defines felony as, "an offence which is declared by law to be a felony or, if not declared to be a misdemeanour, is punishable, without proof of previous conviction, with death, or with imprisonment for three years or more.

Petty offences are generally understood as minor criminal acts which attract less severe punishment and are considered to be of a low level of seriousness.

Petty offences trace their origin from English laws that were designed to, among other things, force people to work, restrict the movement of potential labourers, curtail criminal activity, punish idleness, and enable law enforcement agents to make arrests without proof of actual commission of offences..

Research studies on our criminal justice system have found that criminalization and punishment of petty offences in Kenya has over the years provided a basis for gross violation of the human rights of poor and vulnerable populations especially those in cities and major urban centers of Kenya which is the population segment mostly arrested and detained over petty offences.² They have therefore recommended a reappraisal of the penal code and the criminal procedure code towards decriminalization of petty offences. In 2017 the African Commission on Human and People's rights also adopted Principles on the Decriminalisation of Petty Offences in Africa, urging African countries to take measures toward decriminalization of petty offences.³ Towards this end the National Council on

Administration of Justice (NCAJ) through the Criminal Justice Reforms Committee is currently looking at the penal code and the criminal procedure code towards making recommendations for decriminalization of petty offences such as the one set out in s. 182 of the penal code.

2. Brief on IPOA's position on section 182 of the Penal code

In our view the proposal to repeal the provision is a positive proposal that the Authority should support for the following five main reasons detailed in the attached submission;

1. The criminalization of what amounts to simply petty offence such as those set out in section 182 creates an avenue for human rights violations.
2. The provision is vague and ambiguous making it susceptible to abuse in application by law enforcement officers.
3. Repeal of such petty offences as set out in section 182 will enhance relations between the public and police since the police will not be constrained to enforce laws that appear aimed at simply criminalizing poverty
4. Repeal of such petty offences allows the police to focus on investigations of serious crimes as opposed to being bogged down with handling petty offences.
5. Repeal of such petty offences will go towards unclogging the justice system, the majority of which cases are petty offences such those set out in section 182 of the penal code.

THE INDEPENDENT POLICING OVERSIGHT AUTHORITY'S SUBMISSION TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN THE MATTER OF THE PENAL CODE (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 56 OF 2022)

THE LEGISLATION TO BE AMENDED	PROPOSAL IN THE PENAL CODE (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 56 OF 2022)	IPOA'S POSITION	JUSTIFICATION
<p>Section 182 of the Penal Code; makes provision for</p> <p>Idle and disorderly persons</p> <p>The following persons –</p> <p>a) every common prostitute behaving in a disorderly or indecent manner in any public place;</p> <p>b) every person causing, procuring or</p>	<p>The proposal is to repeal Section 182 of the Penal Code</p>	<p>Repeal the provision</p>	<p>1. The criminalization of what amounts to simply petty offence creates an avenue for human rights violations. Alleged petty offenders experience human rights violations including false arrests and arbitrary detention at different stages of the justice system including during arrest, detention before trial, trial and sometimes, during the post-trial period. For</p>

<p>encouraging any person to beg or gather alms;</p> <p>c) <i>deleted by Act No. 61 of 1968, s. 22;</i></p> <p>d) every person who publicly conducts himself in a manner likely to cause a breach of the peace;</p> <p>e) every person who without lawful excuse publicly does any indecent act;</p> <p>f) every person who in any public place solicits for immoral purposes;</p> <p>g) <i>deleted by Act No. 61 of 1968, s. 22,</i></p> <p>shall be deemed idle and disorderly persons, and are guilty of a misdemeanour and are liable for the first offence to imprisonment for one month or to a fine not exceeding one hundred shillings, or to both and for every subsequent offence to imprisonment for one year</p>			<p>instance, in the financial year 21/22 the Authority received 294 complaints of harassment and 126 complaints of wrongful detention.⁴ This was the third highest nature of complaint lodged with the Authority during that financial year. This trend is also reflected in an audit by the National Council on Administrative Justice on the criminal justice system in Kenya which found 68% of entries in police cells relate to petty offences such as those created by s. 182 of the penal code, and further 45% of arrests were carried out during the weekend and the affected were mainly persons of low income.⁵ Decriminalization of petty offences as proposed through repeal of the provision, would therefore go a long way towards reducing instances of human rights violations by police officers against the citizenry and in particular the poor and marginalized.</p> <p>2. The provision is also vague and ambiguous. Section 182 seeks to criminalize persons who are deemed as idle and disorderly. What is actually meant by idle and disorderly in terms</p>
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			<p>of <i>mensrea</i> and <i>actus reus</i> requisite to constitute the offence is vague and not amenable to a concrete definition required for a criminal offence. This therefore means any conduct can easily be considered as idle and disorderly, therefore opening avenues for the police to arrest nearly anybody on the basis of this provision. This point was reiterated by the High court in <i>Kajiado Constitutional Petition no. 14 of 2017</i> where the court criticized this provision for its vagueness, that renders it susceptible to application by the police as tool to infringe on the rights of persons. The court noted;</p> <p><i>"I do not know how one can criminalize idleness. Gone are the days when the marginalised members of our society were bundled into police cells under this rubric of offences, incapable of constituting any criminal elements. One wonders the sustainability of the offence of being idle and disorderly in our statute books save for the reason of being a fertile provision for the police to use it as a tool to infringe and or violate</i></p>
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the right to equality and non-discrimination under Article 27 Of the constitution.

Undoubtedly, none of the middle income or economically advantaged class of our society finds himself or herself being arrested or indicted with these kind of offences."

The court further awarded damages to 19 petitioners who had been arrested by the police on the basis of this provision, for violation of their constitutional rights

3. Repeal of such offences will also enhance relations between the public and police. The decriminalization of petty offences that target poverty such as that created by section 182(b) of the penal code reduces instances of conflict between the police and the public especially the poor and marginalized, since the police will not be constrained to enforce laws that appear aimed at simply criminalizing poverty.

4. Repeal of such offences allows the police to focus on investigations of serious crimes as opposed to being bogged down with handling petty offences.

			<p>As afore stated the study by the NCAJ on the criminal justice system in Kenya found 68% of entries police cells relate to petty offences such as those created by s. 182. This therefore means a majority of police work is focused on petty offences as opposed to real crimes that have an impact on security of the country. Repealing such provisions frees up the police to focus real crimes that have an impact.</p> <p>5. Such petty offences also contribute to clogging of the justice system. The audit by the NCAJ of the criminal justice sector found that 30% of cases in court are actually petty offences such those created by s. 182 of the penal code. Repealing such provisions as section 182 goes along way in unclogging the justice sector to deal with the more serious offences.</p>
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Signed:



**ANNE MAKORI, EBS. (MRS)
CHAIRPERSON**

Dated: 12th April 2023.

END

¹ Penal Code, Section 2

² Refer to the National Council on the Administration of Justice Audit of the criminal justice system in Kenya An audit on Criminal Justice System in Kenya report available at <https://www.judiciary.go.ke> ; International Commission of Jurists (ICJ)- Kenya Law and Policy Research on the Petty Offences and Practices Affecting Populations at the National Level and in Kisumu, Mombasa and Nairobi Counties 2017 available at https://ici-kenya.org/?smd_process_download=1&download_id=4982 ; International Commission of Jurists (ICJ)- Kenya et al, Re-thinking the bars: Access and Administration of justice for women who commit petty offences, 2022 report available at <https://cleanstartkenya.org/media/css/2022/07/RE-thinking-bars-Report-design.pdf>

³ The African Commission on Human and Peoples Rights Principles on the Decriminalisation of Petty Offences in Africa available at <https://acjr.org.za/resource-centre/decriminalisation-of-petty-offences-web.pdf/view>

⁴ The Independent Policing Oversight Authority Annual report for the year ended 30th June 2022

⁵ Refer to The National Council on the Administration of Justice Audit of the criminal justice system in Kenya; See also International Commission of Jurists (ICJ)- Kenya Law and Policy Research on the Petty Offences and Practices Affecting Populations at the National Level and in Kisumu, Mombasa and Nairobi Counties 2017; International Commission of Jurists (ICJ)- Kenya et al, Re-thinking the bars: Access and Administration of justice for women who commit petty offences, 2022 report.

Amara



LAW SOCIETY OF KENYA
Lavington, Opposite Valley Arcade
Gitanga Road
P.O. Box 72219-00200
NAIROBI
Tel. 387 4664
0720 904983

MEMORANDUM

ON

THE PENAL CODE (AMENDMENT) BILL, 2022

MAY, 2023

Eric Theuri, President Law Society of Kenya
Lavington, opp Valley Arcade,
Gitanga Road P.O Box 72219 - 00200 Nairobi | Kenya
Tel: +254 111 045 300
Email: lskpresidenttheuri@gmail.com/ president@lsk.or.ke
Website: www.lsk.or.ke

THE PENAL CODE (AMENDMENT) BILL, 2022

Introduction

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya currently numbering to over 21,000.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- **President**, Eric Theuri
- **Vice President**, Faith Mony Odhiambo
- **General Membership Representatives**, Chrysostom Akhaabi, Kabata Mwaura, Tom K'opere
- **Nairobi Representatives**, Cohen Amany, Njoki Mboce, Ochieng Gor
- **Up-country Representatives**, Byron Menezes, Lindah Kiome, Michael Wabwile, Vincent Githaiga
- **Coast Representative**, Riziki Emukule
- **Secretary/CEO**, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to the statutory mandate, the Law Society of Kenya makes the following submissions on The Penal Code (Amendment) Bill, 2022.

SPECIFIC COMMENTS ON THE PENAL CODE (AMENDMENT) BILL, 2022

Provision of the bill	Issue	Proposal
Section 182 on idle and disorderly persons	<p>The law as it stands balances the right to people's privacy and public interest.</p> <p>The mischief sought to be cured by removing the current statutory provisions is unclear.</p> <p>A decent society requires social order. These laws are for the protection of Social Order and ought to be maintained.</p>	We propose that, as a social protection measure, the law ought to be maintained as it is.
While it is our recommendation that the provision should be maintained as it is, we also recommend while being maintained, following amendments should be effected –		
Section 182(b) idle and disorderly persons	<p>This section provides that;</p> <p><i>“(b) every person causing, procuring or encouraging any person to beg or gather alms shall be deemed idle and disorderly persons, and are guilty of a misdemeanour and are liable for the first offence to imprisonment for one month or to a fine not exceeding one hundred shillings, or to both and for every subsequent offence to imprisonment for one year.”</i></p>	<p>We recommend that Section 182 (b) should be expanded to include Aiding begging.</p> <p>For example people who provide shelter or spaces where beggars operate from.</p>
Section 182(d) idle and disorderly persons	<p>This section states that;</p> <p><i>“(d) every person who publicly conducts himself in a manner likely to cause a breach of the peace; shall be deemed idle and disorderly persons, and are guilty of a misdemeanour and are liable for the first offence to imprisonment for one month or to a fine not exceeding one hundred shillings, or to both and for every subsequent offence to imprisonment for one year.”</i></p> <p>Reference to "<i>himself</i>" is gender discriminate, women can easily get away from doing the same act.</p>	<p>We recommend that the word "<i>himself</i>" should be amended to provide gender neutrality.</p> <p>Delete <i>himself</i> and replace with <i>themselves</i></p>

In conclusion, we humbly submit that our comments be considered before enacting the Bills and Policy.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Eric Theuri', written in a cursive style.

Eric Theuri
President Law Society of Kenya