

REPUBLIC OF KENYA

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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON:

**THE CONSIDERATION OF THE PRESIDENT’S MEMORANDUM
ON RESERVATIONS TO THE
PENAL CODE (AMENDMENT) BILL, 2022
(NATIONAL ASSEMBLY BILL NO. 56 OF 2022)**

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 AUG 2024	DAY: TUESDAY
TABLED BY:	HON. GITONGA MURUGURA (CHAIRPERSON)
CLERK-AT THE-TABLE:	IMZOFU MWALU

NATIONAL ASSEMBLY
RECEIVED
06 AUG 2024
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

AUGUST 2024

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LIST OF ABBREVIATIONS AND ACRONYMS

EACC	-	Ethics and Anti-Corruption Commission
H.E.	-	His Excellency
MCCP	-	Maendeleo Chap Chap Party
ODM	-	Orange Democratic Movement
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 President's Memorandum on the Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022). The Bill was passed by the National Assembly on 20th March, 2024.

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. The Speaker then presented the Bill to the President for assent pursuant to Standing Order 153.

In accordance with Article 115(1)(b) of the Constitution, the President, vide a memorandum dated 2nd May, 2024, referred the Bill back to the National Assembly for reconsideration with reservations recommending deletion of clause 2 of the Bill. The Memorandum cited that the repeal shall encourage the commission of the acts covered under Section 182. This is a disturbing prospect, especially when the conduct in question is still viewed as criminally delinquent by the public. The President contends that decriminalizing the offense may ultimately undermine the broader public interest. Therefore, the President advocates for striking a delicate balance between preserving public order and combating instances of police overreach.

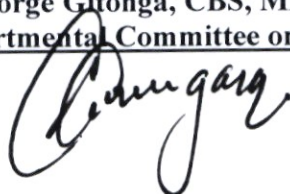
The Speaker referred the President's Memorandum of Referral in respect of the Bill to the Committee pursuant to Standing Order 154. The Committee considered the President's Memorandum in its meeting held on Tuesday, 30th July, 2024. The deliberations formed the basis on which the Committee made its decision.

It is my pleasure to report that the Committee has considered the President's Memorandum and recommendations on the Penal Code (Amendment) Bill (*National Assembly Bill No. 56 of 2022*) and wish to report to this August House with the recommendation that the House **ADOPTS** the President's reservations to the Bill.

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 President's Memorandum to the Bill. May I also record 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.

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 President's Memorandum on Penal Code (Amendment) Bill (*National Assembly Bill No. 56 of 2022*).

Hon. Murugara George Gitonga, CBS, 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
- m) Council of Legal Education.

¹ National Assembly Standing Orders, 6th Edition.

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, CBS, 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. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Mr. Omar Abdirahim
Fiscal Analyst I

Mr. Abdikafar Abdi
Clerk Assistant III

Ms. Mary Kamande
Public Communications Officer III

Ms. Jael Ayiego
Clerk Assistant III

Mr. John Nduaci
Serjeant-At-Arms

Ms. Vivienne Ogega
Research Officer III

Mr. Calvin Karung'o
Media Relations Officer III

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Peter Mutethia
Audio Officer III

Mr. Silas Opanga
Hansard Reporter III

CHAPTER TWO

2 CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON PENAL CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 56 OF 2022)

2.1 Background

6. The Bill was passed by the National Assembly on 20th March, 2024. The Speaker thereafter presented the Bill to the President for assent.
7. In accordance with Article 115(1)(b) of the Constitution, the President, vide a memorandum dated 2nd May, 2024, referred the Bill back to the National Assembly for reconsideration with reservations recommending deletion of clause 2 of the Bill.
8. The Speaker, on Presidential Memorandum on the Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022) dated 2nd May, 2024, pursuant to the provisions of Standing Order 42(2) and (3), referred the President's Memorandum of Referral in respect of the Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022) to the Committee.
9. The Memorandum cited that the repeal shall encourage the commission of the acts covered under Section 182. This is a disturbing prospect, especially when the conduct in question is still viewed as criminally delinquent by the public. The President contends that decriminalizing the offense may ultimately undermine the broader public interest. Therefore, advocates for striking a delicate balance between preserving public order and combating instances of police overreach.

2.2 CONSIDERATION OF THE PRESIDENT'S MEMORANDUM

10. The Committee held a meeting on **30th July, 2024** during which it deliberated on the President's Reservations to the Penal Code (Amendment) Bill, 2022.
11. Article 115 of the Constitution provides for President's reservations in the following terms—

Presidential assent and referral.

115. (1) *Within fourteen days after receipt of a Bill, the President shall—*

(a) assent to the Bill; or

(b) refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.

(2) If the President refers a Bill back for reconsideration, Parliament may, following the appropriate procedures under this Part—

(a) amend the Bill in light of the President's reservations; or

(b) pass the Bill a second time without amendment.

(3) If Parliament amends the Bill fully accommodating the President's reservations, the appropriate Speaker shall re-submit it to the President for assent.

(4) Parliament, after considering the President's reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President's reservations, by a vote supported—

(a) by two-thirds of members of the National Assembly; and

(b) two-thirds of the delegations in the Senate, if it is a Bill that requires the approval of the Senate.

(5) If Parliament has passed a Bill under clause (4)—

- (a) *the appropriate Speaker shall within seven days re-submit it to the President; and*
- (b) *the President shall within seven days assent to the Bill.*
- (6) *If the President does not assent to a Bill or refer it back within the period prescribed in clause (1), or assent to it under clause (5)(b), the Bill shall be taken to have been assented to on the expiry of that period.*

12. In accordance with Article 115(1)(b) of the Constitution, the President, vide a memorandum dated 2nd May, 2024, referred the Bill back to the National Assembly for reconsideration with reservations recommending **deletion of Clause 2 of the Bill**. The President was of the opinion that if the Bill is assented to in its present form without offering alternative offences or sanctions, the Bill will effectively render certain indecent, immoral or disruptive public conduct acceptable.

13. In considering the President's reservations, the Committee had two options as contemplated in Article 115(2) of the Constitution. These were:

- (a) Recommending that the House amends the Bill fully accommodating the President's reservations; or
- (b) Recommending that the House passes the Bill a second time without amendment.

14. The Committee therefore concurred fully with the President's reservations, noting that the concerns raised by H.E. the President were valid and reasonable.


CHAPTER THREE

3 COMMITTEE RECOMMENDATION

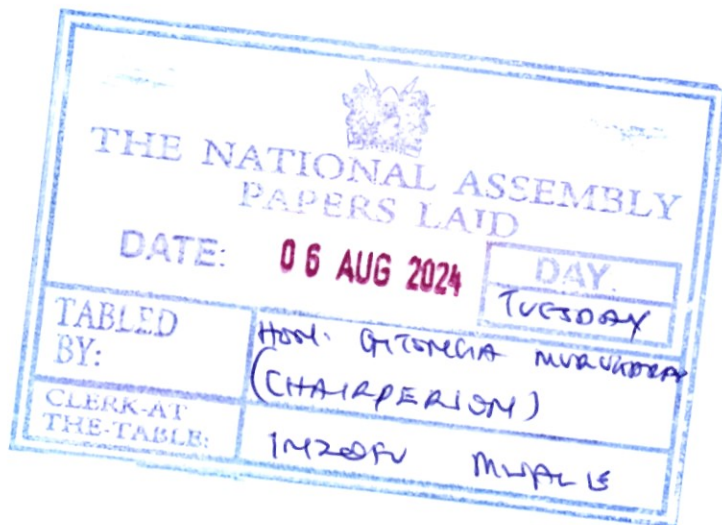
15. The Committee, having considered the President's reservations to the Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022) and pursuant to Article 115(2) (a) of the Constitution, recommends that the House **adopts** the President's reservations to the Bill and amends the Bill as follows:

CLAUSE 2

THAT, clause 2 of the Bill be deleted.

SIGNED.....  DATE..... 6. 8. 024

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



Annexure **1**

Adoption Schedule



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**ADOPTION OF THE COMMITTEE REPORT ON
PRESIDENT'S MEMORANDUM REFERRING THE PENAL CODE (AMENDMENT) BILL, 2024
BACK TO THE HOUSE FOR RECONSIDERATION**

We, the Members of the Departmental Committee on Justice and Legal Affairs have, pursuant to Standing Order 199, adopted this Report of the Committee on the President's Memorandum Referring the Penal Code (Amendment) Bill, 2024 Back to The House for Reconsideration and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson

2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chair

3. Hon. Maalim Farah, EGH, 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**

Adoption Minutes

MINUTES OF THE FORTY EIGHTH (48TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY, 31ST JULY 2024 AT 10.20 A.M. IN ROOM 18, 3RD FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS, NAIROBI

MEMBERS PRESENT

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

MEMBERS ABSENT WITH APOLOGIES

1. Hon. Farah Maalim, EGH, MP
2. Hon. Francis Kajwang' Tom Joseph, MP
3. Hon. Junet Mohamed, CBS, MP
4. Hon. (Dr.) Otiende Amollo, SC, MP
5. Hon. Onyiego Silvanus Osoro, CBS, MP
6. Hon. Muchira Michael Mwangi, MP
7. Hon. Siyad Amina Udgoon, MP

SECRETARIAT

- | | | |
|----------------------------|---|--------------------------------|
| 1. Mr. Ahmed Salim Abdalla | - | Clerk Assistant I / Lead Clerk |
| 2. Ms. Jael Ayiego Kilaka | - | Clerk Assistant III |
| 3. Mr. Abdikafar Abdi | - | Clerk Assistant III |
| 4. Mr. Omar Abdirahim | - | Fiscal Analyst II |
| 5. Mr. Isaac Nabiswa | - | Legal Counsel II |
| 6. Mr. Calvin Karungo | - | Media Relations Officer |
| 7. Mr. Dennis Kamau | - | Audio Officer |
| 8. Mr. John Nduaci | - | Serjeant-at-Arms |

IN ATTENDANCE

Ethics and Anti-Corruption Commission

- | | | |
|--------------------------|---|------------------------------------|
| 1. Mr. Abdi Mohamud | - | Deputy Chief Executive Officer |
| 2. Ms. Faith Ngethe | - | Assistant Director, Asset Recovery |
| 3. Mr. Wycliff Nyang'ate | - | Coordination Officer |

Office of the Director of Public Prosecutions

- | | | |
|-----------------------|---|------|
| 1. Mr. Geoffrey Obiri | - | ADPP |
|-----------------------|---|------|

Law Society of Kenya

- | | | |
|-------------------------|---|-------------------|
| 1. Mr. Collins Odhiambo | - | Deputy CEO, LSK |
| 2. Ms. Sarah Agong' | - | Programme Officer |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of the previous minutes
4. Meeting with Stakeholders on the Ethics and Anti-Corruption Commission (Amendment) Bill, 2024 (National Assembly Bill No. 11 of 2024)
5. Consideration and Adoption of the report on Ethics and Anti-Corruption Commission (amendment) Bill, 2024 (National Assembly Bill No. 11 of 2024)
6. Consideration and Adoption of the report on the consideration of the President's memorandum on Penal Code (amendment) Bill, 2022 (National Assembly Bill No. 56 of 2022)
7. Any Other Business
8. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/247/2024:

PRELIMINARIES

The meeting was called to order at twenty minutes past ten o'clock by the Chairperson, followed by a word of prayer and thereafter Members introduced themselves. The agenda of the meeting was adopted, having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Aden Daud, EBS, MP.

MIN. NO. DDC/JLAC/248/2024:

CONFIRMATION OF MINUTES

The agenda was deferred.

MIN. NO. DDC/JLAC/249/2024:

MEETING WITH STAKEHOLDERS ON THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL, 2024

The following Stakeholders appeared before the Committee to make their submissions on the Ethics and Anti-Corruption Commission (Amendment) Bill, 2024 (National Assembly Bill No. 11 of 2024): -

1. Ethics and Anti-Corruption Commission

The Deputy Chief Executive Officer appeared before the Committee and submitted that the Commission, having carefully considered the proposed amendment opposed the Bill for the following reasons:

- (a) the Commission had a fully established Directorate of Legal Services with some of its officers holding qualifications of a judge of a superior court. The function of the Directorate includes reviewing evidence in the course of investigations to ascertain that it meets the legal threshold;
- (b) restricting the role to the legal profession may limit diversity in the leadership of the Commission, which could result in a lack of diverse competencies and expertise;
- (c) candidates from non-legal background may bring in fresh ideas and diverse skill sets; and
- (d) legal professionals may possess strong legal expertise but may lack skills and experience in leadership or other areas relevant to anti-corruption work, such as investigation techniques, financial analysis, corruption prevention and advocacy.

2. Office of the Director of Public Prosecutions

The Office of the Director of Public Prosecutions supported the amendments in the Bill on the following grounds:

- i. it was vital that the persons appointed to the position of Chairperson of the Commission be a person qualified to be a high court judge. This will ensure

competence and familiarity with legal matters. The ODPP submitted that it was prudent that the Chairperson appreciates the workings of the Kenyan legal systems and this can only be realized by someone who has undergone the Kenyan Legal Education System;

- ii. the proposal was acceptable as it raises the perceived quality of the decisions made by the EACC, thereby adding to the legitimacy of the decisions thereof.
- iii. the proposal was further acceptable as it neither interfered with the mandate of the DPP nor affects the independence of the Office of the DPP as stipulated under Article 157 of the Constitution of Kenya, 2010.

3. The Law Society of Kenya

The Law Society of Kenya appeared before the Committee and submitted that they were in support of the Bill. They however explained that they were still receiving views from their members and undertook to share any more feedback that they may receive from the members of the Law Society of Kenya.

MIN. NO. DDC/JLAC/250/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 11 OF 2024)

The Committee considered the Bill and took into account the submissions from the Ethics and Anti-Corruption Commission, Office of the Director of Public Prosecutions and the Law Society of Kenya. The Committee also considered written submissions received from the Kenya Law Reform Commission, the County Governance Watch, one Mr. Levine K. Njau and one Mr. Anthony Mulili. The Committee observed that:

- i. Except for the Ethics and Anti-Corruption Commission, all other stakeholders and members of the public were in support of the Bill.
- ii. It was necessary that the persons appointed to the position of the Chairperson of the Commission be a person qualified to hold the position of a judge of the High Court because this would ensure the holder was more familiar with legal matters; an aspect which was very important in light of the nature of the operations of the Commission.
- iii. The proposed qualification would raise the perceived quality of the decisions made by the Commission.

Committee Recommendation

The Committee resolved to recommend to the House the approval of the Ethics and Anti-Corruption Commission (Amendment) Bill (National Assembly Bill No. 11 of 2024), with an amendment to delete Clause 3 which was a saving provision. The Committee noted that there was need to ensure that, after the commencement of the Act, the Commission benefits immediately from a Chairperson who is a person qualified to be a judge of the High Court, hence the proposed amendment.

Adoption of the report

The report was therefore adopted, having been proposed by Hon. Stephen Mogaka, MP and seconded by Hon. Aden Daud, MP.

MIN. NO. DDC/JLAC/251/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE PENAL CODE (AMENDMENT) BILL, 2022 (NATIONAL ASSEMBLY BILL NO. 56 OF 2022)

The Committee considered H.E. the President's reservations on the Penal Code (Amendment) Bill, 2022 (National Assembly Bill No. 56 of 2022). The Committee concurred with the President's findings and observed that: -

- i. The repeal may encourage the commission of the acts covered under Section 182. As submitted by the President, this likelihood was a disturbing prospect, especially when the conduct in question is still viewed as criminally delinquent by the public.
- ii. The repeal of Section 182 may undermine the credibility of criminal law and may promote public disorder and disobedience.
- iii. There was likely to be a general decrease in compliance with the law, increased resistance to and subversion of the law, and potential vigilantism where the public shall seek to enforce its own decency and moral code without recourse to the legal system.

Committee recommendation

The Committee, having considered the President's reservations to the Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022) and pursuant to Article 115(2) (a) of the Constitution, resolved to recommend to the House to adopt the President's reservations to the Bill by deleting Clause 2 of the Bill. The Committee noted that the effect of this proposal is that the Bill cease to exist.

Adoption of the report

The report was therefore adopted, having been proposed by Hon. Stephen Mogaka, MP and seconded by Hon. Aden Daud, MP.

MIN. NO. DDC/JLAC/252/2024: ADJOURNMENT

There being no other business, the meeting was adjourned at ten minutes past twelve o'clock. Next sitting to be held on notice.

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

Annexure **3**

President's Memorandum on the Penal Code (Amendment) Bill, 2022

...and the Penal Code (Amendment) Bill, 2022



THE CONSTITUTION OF KENYA

REFERRAL of THE PENAL CODE (AMENDMENT) BILL, 2024

PRESIDENTIAL MEMORANDUM OF REFERRAL

By **HIS EXCELLENCY, THE HONOURABLE WILLIAM SAMOEI RUTO**, Ph.D., President and Commander-in-Chief of the Kenya Defence Forces.

Submitted to the **HON. SPEAKER OF THE NATIONAL ASSEMBLY.**

WHEREAS a Bill titled "*An Act of Parliament to make various amendments to Penal Code and for connected purposes*", the short title of which is "*Penal Code (Amendment) Act, 2024*", was passed by the National Assembly on the 20th March, 2024;

AND WHEREAS the Penal Code (Amendment) Bill, 2024 was presented to me for assent in accordance with the provisions of the Constitution on the 24th day of April, 2024;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115 of the Constitution, I decline to assent to the Penal Code (Amendment) Bill, 2024, and refer the Bill for Reconsideration by the National Assembly, for the reasons set out hereunder:

CLAUSE 2

Clause 2 of the Bill proposes to amend the Penal Code by repealing section 182 which prescribes the offence of being idle and disorderly.

If the Penal Code (Amendment) Bill, 2024, is assented to in its present form without offering alternative offences or sanctions, the Bill will effectively render certain indecent,

immoral or disruptive public conduct to be acceptable.

The repeal of section 182 shall allow persons to freely:

- (a) behave in a disorderly or indecent manner in a public place;
- (b) cause, procure or encourage people to beg or gather alms;
- (c) conduct themselves in a manner likely to cause a breach of the peace; or
- (d) commit indecent acts in public; and
- (e) solicit for immoral purposes in a public place.

The repeal shall encourage the commission of the acts covered under Section 182. This is a disturbing prospect, especially when the conduct in question is still viewed as criminally delinquent by the public.

The repeal undermines the credibility of criminal law and may promote public disorder and disobedience. Decriminalization of conduct that is still viewed as delinquent by Society undermines the moral credibility of criminal law in

the eyes of the public. A blanket decriminalization of conduct that a majority of the public considers socially delinquent undermines the law's reputation as a reliable moral authority that should be obeyed. Furthermore, there is likely to be a general decrease in compliance with the law, increased resistance to and subversion of the law, and potential vigilantism where the public shall seek to enforce its own decency and moral code without recourse to the legal system.

I am keenly aware of the philosophical principles underlying the proposed amendment, particularly the imperative to mitigate the potential of police abuse of power and to prevent the targeting of law-abiding citizens. This has clearly been articulated in the Report of the Justice and Legal Affairs Committee on its consideration of the Bill and has equally been advanced by Members of Parliament on the floor of House on various dates; most notably during the Committee of the Whole House on 13th March 2024.

Nevertheless, I contend that decriminalizing the offense may ultimately undermine the broader public interest. Therefore, I advocate for striking a delicate balance between preserving public order and combating instances of police overreach.

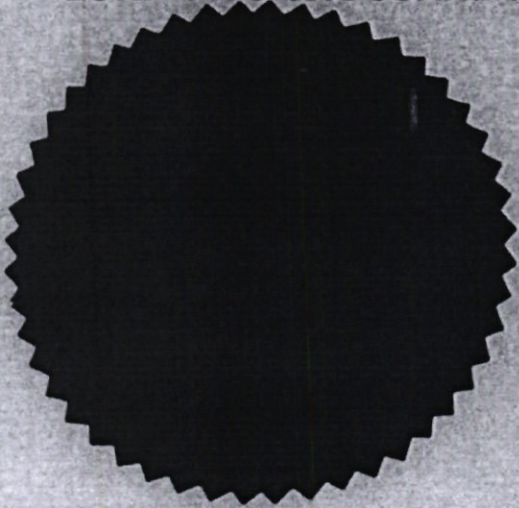
RECOMMENDATION:

For the foregoing reasons, I recommend the Bill be amended by deleting clause 2.

IN WITNESS THEREOF, I hereunto have set my Hand and caused

the Public Seal of the Republic to be affixed on this *2nd* day of *May*, in the year of our

LORD TWO THOUSAND AND TWENTY-FOUR.



WILLIAM SAMOEI RUTO,
President.

SPECIAL ISSUE

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



REPUBLIC OF KENYA

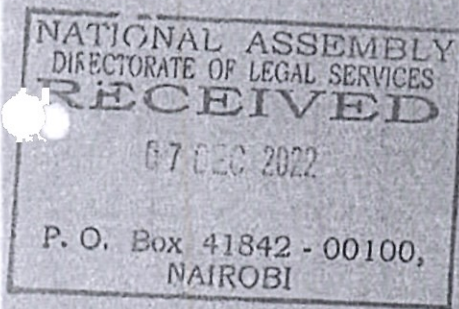
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2022

NAIROBI, 16th November, 2022

CONTENT

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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.]



