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NATIONAL ASSEMBLY
DIRECTORATE OF LEGAL SERVICES
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THE PENAL CODE (AMENDMENT) BILL, 2021

A Bill for

AN ACT of Parliament to amend the Penal Code, *Cap.* 63 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Penal Code (Amendment) Act, 2021.

Insertion of new definitions in Cap. 63

2. Section 4 of the Penal Code (hereinafter referred to as the *"principal Act"*), is amended by inserting the following new definitions in their proper alphabetical sequence—

"livestock" means the male, female or young one of an ass, bull, camel, cow, an ewe, gelding, goat, horse, mare, mule, ostrich, ox, ram, wether or pig;"

"livestock produce" means the whole or part of any skin, horn, or carcass of livestock and includes wool, mohair and ostrich feathers;"

Deletion of section 278 of Cap. 63.

3. The principal Act is amended by deleting section 278 and substituting therefor the following section—

Stealing Stock.

278. (1) A person who steals livestock commits an offence and shall, be sentenced to death upon conviction.

Insertion of new sections in Cap. 63.

4. The principal Act is amended by inserting the following new sections immediately after section 278—

Stealing of livestock or livestock produce.

278A. A person who steals livestock produce commits an offence and, shall upon conviction, be liable to imprisonment for a term of not less than fifteen years.

Handling stolen livestock or livestock produce.

278B. A person who receives livestock or livestock produce, knowing or having reason to believe it to be stolen, commits an offence and, shall upon conviction, be liable to imprisonment for a term of not less than fifteen years.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the Bill

The principal object of this Bill is to amend the Penal Code, *Cap. 63* to provide for the enhancement of the punishment for livestock theft by providing that the offence shall be punishable by death. The Bill also seeks to amend the principal Act to provide for the enhancement of punishment for the offence of handling stolen livestock or livestock produce.

The proposed amendments seek to remedy the disruption of the socio-economic activities and livelihood of pastoralist communities who reside in regions where the vice is rampant.

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

This Bill does not delegate legislative powers nor does it limit the fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

The Bill does not concern county governments in terms of Article 110(1) of the Constitution as it does not contain provisions affecting the functions and powers of the county governments as set out under Part II of the Forth Schedule to the Constitution.

Statement as to whether 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 14th December, 2020.

NIMROD MBAI,
Member of Parliament.

Section 4 of Cap. 63 that it is proposed to be amended—

Interpretation

4. In this Code, unless the context otherwise requires—

"Act" includes any order, rules or regulations made under any Act;

"court" means a court of competent jurisdiction;

"dangerous harm" means harm endangering life;

"disciplined forces" means the armed forces or the National Youth Service;

"dwelling-house" includes any building or structure or part of a building or structure which is for the time being kept by the owner or occupier for the residence therein of himself, his family or his servants or any of them, and it is immaterial that it is from time to time uninhabited; a building or structure adjacent to or occupied with a dwelling-house is deemed to be part of the dwelling-house if there is a communication between such building or structure and the dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise;

"electronic record" means a record generated in digital form by an information system which can be transmitted within an information system or from one information system to another, and stored in an information system or other medium;

"felony" means an offence which is declared by law to be a felony or, if not declared to be a misdemeanor, is punishable, without proof of previous conviction, with death, or with imprisonment for three years or more;

"Government" *deleted by Act No. 24 of 1967, Sch;*

"Government of Kenya" *deleted by Act No. 24 of 1967, Sch;*

"grievous harm" means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense;

"harm" means any bodily hurt, disease or disorder whether permanent or temporary;

"judicial proceeding" includes any proceeding had or taken in or before any court, tribunal, commission of inquiry or person in which evidence may be taken on oath;

"knowingly", used in connexion with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used;

"local authority" *deleted by Act No. 24 of 1967, Sch*;

"maim" means the destruction or permanent disabling of any external or internal organ, member or sense;

"misdemeanour" means any offence which is not a felony;

"money" includes bank notes, currency notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

"night" or "night-time" means means the interval between half-past six o'clock in the evening and half-past six o'clock in the morning;

"oath" includes affirmation or declaration;

"offence" means an act, attempt or omission punishable by law;

"person employed in the public service" means any person holding, or performing with authority the duties of, any of the following offices (whether as principal or as deputy, and whether such service is permanent or temporary, paid or unpaid)—

(a) any office the holder of which is appointed or removed by the President or by any public commission;

(b) any office the holder of which is appointed, elected or otherwise selected in pursuance of some written law;

(c) any office the holder of which is appointed by any person or persons holding, or performing with authority the duties of, an office of one of the kinds specified in paragraph (a) or paragraph (b), and, without prejudice to the generality of the foregoing, includes—

(i) an arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court or in pursuance of some written law;

(ii) every member of a Commission of Inquiry or of a tribunal appointed or selected in pursuance of some written law;

(iii) any person in the service of the disciplined forces;

(iv) any person in the employment of the Government, the Community or any local authority;

(v) any person employed to execute any process of a court;

(vi) any person acting as a minister of religion, in respect of the exercise by him of any functions relating to the notification of intending marriage, or the solemnization of marriage, or the making or keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect;

"police force" includes the Force defined in section 2 of the Police Act (Cap.

84), and the Administration Police Force established under the Administration

Police Act (Cap. 85); and "police officer" shall be construed accordingly;

"possession"—

(a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person;

(b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

"premises" includes any land, any building and any other place whatsoever;

"print" means to produce or reproduce words or pictures in visible form by printing, writing, typewriting, duplicating, cyclostyling, lithography, photography or any other means of representing the same in visible form;

"prohibited publication" means any publication the importation of which has been prohibited under section 52, and any part, copy or reproduction of any such publication;

"property" includes any description of movable or immovable property, money, debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and also includes not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same has been

converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise;

"public" refers, not only to all persons within Kenya, but also to the persons inhabiting or using any particular place, or any number of such persons, and also to such indeterminate persons as may happen to be affected by the conduct in respect to which such expression is used;

"public place" or "public way" includes any highway, market place, square, street, bridge or other way which is lawfully used by the public;

"publicly", when applied to acts done, means either—

(a) that they are so done in any public place as to be seen by any person whether such person be or be not in a public place; or

(b) that they are so done in any place not being a public place as to be likely to be seen by any person in a public place;

"statute" *deleted by Act No. 24 of 1967, Sch.*

"unlawful society" means any unlawful society within the meaning of section 4(1) of the Societies Act (Cap. 108);

"utter" means and includes using or dealing with and attempting to use or deal with and attempting to induce any person to use, deal with, or act upon the thing in question;

"valuable security" includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property;

"vessel" includes any ship, a boat and every other kind of vessel used in navigation either on the sea or in inland waters and includes aircraft;

"wound" means any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is exterior for the purpose of this definition which can be touched without dividing or piercing any other membrane;

"written law" means the Constitution, any Act of Parliament of Kenya, or any applied Act, and includes any orders, rules, regulations, by-laws or other subsidiary legislation made under any written law.

Section 278 of Cap. 63 that it is proposed to be amended—

Stealing stock

278. If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.