

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 79 (National Assembly Bills No. 26)*



REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2022**

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**NAIROBI, 10th May, 2022**

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**CONTENT**

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**THE STATUTE LAW (MISCELLANEOUS  
AMENDMENTS) BILL, 2022**

**A Bill for**

**AN ACT of Parliament to make minor amendments to  
statute law**

**ENACTED** by the Parliament of Kenya, as follows—

**1.** This Act may be cited as the Statute Law  
(Miscellaneous Amendments) Bill, 2022.

Short title

**2.** The several laws specified in the first column of  
the Schedule are amended in the provisions specified in the  
second column thereof, in the manner respectively  
specified in the third column.

Amendment of  
written laws.

**SCHEDULE**

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
The Appellate Jurisdiction Act (Cap. 9).	s. 59 (7)  s. 73	Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.  Delete the expression “Attorney-General” wherever they appear and substitute therefor the expression “Director of Public Prosecutions”.
The Vexatious Proceedings Act (Cap. 41).	s. 4	Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.
The Penal Code (Cap. 63)	s. 146	Delete the words “idiots or embeciles” whenever they appear and substitute therefor the words “persons with mental disabilities”.



The Criminal Procedure  
Code (Cap. 75).

s. 2

Delete the expression  
“State Counsel” appearing in  
the definition of the term  
“public prosecutor” and  
substitute therefor the  
expression “Prosecution  
Counsel”.

s. 2

Delete the definition of  
“police officer” and substitute  
therefor the following new  
definition—

No. 11A of 2012.

“police officer” has  
the meaning assigned to  
it under the National  
Police Service Act,  
2012;

s. 2

Delete the definition of  
“police station” and substitute  
therefor the following new  
definition—

No. 11A of 2012.

“police station” has  
the meaning assigned  
to it under the National  
Police Service Act,  
2012;

s. 83

Delete and substitute  
therefor the following new  
section—

**83.** (1) The Director  
of Public Prosecutions  
may order in writing  
that all or any of the  
powers vested in him  
by sections 81 and 82,  
and by Part VIII, be  
vested for the time  
being in the Secretary  
of Prosecution



Services, the Deputy Director of Public Prosecutions, the Senior Assistant Director of Public Prosecutions, Assistant Director of Public Prosecutions, the Senior Principal Prosecutions Counsel, the Senior Prosecution Counsel and Prosecution Counsel, and the exercise of those powers by the specified officers shall then operate as if they had been exercised by the Director of Public Prosecutions.

(2) The Director of Public Prosecutions may in writing revoke an order made by him under this section.

s. 90 (3) Delete the words “a Sunday” and substitute therefor the words “any day of the week including Sunday”.

s. 123 (1) Delete the words “other than a person accused of murder, treason, robbery with violence attempted robbery with violence and any related offence”.

s. 131 (2) Delete the word “movable”.

s. 137O Delete the expression



“Attorney-General” and  
substitute therefor the  
expression “Director of  
Public Prosecutions”.

s. 184 Delete.

s. 186 Delete.

**The** s. 7 Delete the expression  
**Extradition** “Attorney-General” and  
**(Commonwealth** substitute therefor the  
**Countries)** expression “Director of  
**Act (Cap. 77).** Public Prosecutions”.

s. 8 Delete the expression  
“Attorney-General” and  
substitute therefor the  
expression “Director of  
Public Prosecutions”.

s. 9 Delete the expression  
“Attorney-General” and  
substitute therefor the  
expression “Director of  
Public Prosecutions”.

s. 10 Delete the expression  
“Attorney-General” and  
substitute therefor the  
expression “Director of  
Public Prosecutions”.

**The** s. 3 Insert the following  
**Evidence** definition in proper  
**Act (Cap. 80).** alphabetical sequence—

“photograph” means  
an image created by  
light falling on a light  
sensitive surface, either  
photographic film or an  
electronic medium and  
made visible and  
permanent by chemical  
treatment or stored



digitally.

s. 78 (1)            Insert the words “or an electronic and digital medium” immediately after the word “film”.

S. 125(2)           Delete the words “a mentally disordered person or a lunatic” and substitute therefor the words “a person with a mental disability”.

The                    s. 6                    Delete the expression  
National                    “Attorney-General” and  
Flag,                    substitute therefor the  
Emblems                   expression “Director of  
and Names                   Public Prosecutions”.  
Act (Cap. 99).

The                    s. 10 (1)            Delete the expression  
Official                    “Attorney-General” and  
Secrets                    substitute therefor the  
Act (Cap. 187).           expression “Director of  
Public Prosecutions”.

s. 49 (1)            Delete the expression  
“Attorney-General” and  
substitute therefor the  
expression “Director of  
Public Prosecutions”.

The                    s. 3 (3)            Delete the expression  
Geneva                    “Attorney-General” and  
Conventions               substitute therefor the  
Act (Cap. 198).           expression “Director of  
Public Prosecutions”.

The                    s. 40 (4)            Delete the expression  
Pharmacy                   “Attorney-General” and  
and Poisons               substitute therefor the  
Act (Cap. 244).           expression “Director of  
Public Prosecutions”.

The                    s. 42 (5)            Delete the expression



Mental Health Act (Cap. 248).      “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The Land Consolidation Act (Cap. 283).      s. 14 (5) (b)      Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The Land Adjudication Act (Cap. 284).      s. 33      Delete the expression “Attorney-General” appearing in the proviso and substitute therefor the expression “Director of Public Prosecutions”.

The Marine Insurance Act (Cap. 390).      s. 91 (3)      Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The Local Manufactures (Export Compensation) Act (Cap. 482).      s. 10 (2)      Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The Capital Markets Act (Cap. 485A).      s. 38      Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The Architects and Quantity Surveyors Act (Cap. 525).      s. 3 (3)      Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.



The Prevention of Fraud (Investments) Act (No. 1 of 1977). s. 27 (3) Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The Higher Education Loans Board Act 1995, (No. 3 of 1995). s. 24 Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The Retirement Benefits Act (No. 3 of 1997). s. 54A (1) Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The Co-operative Societies Act, 1997 (No. 12 of 1997). s. 94 (3) Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The Environmental Management and Co-ordination Act (No. 8 of 1999) s. 31 (1) Delete the introductory portion thereof and substitute therefor the following—

(1) “There shall be a Committee to be known as the National Environmental Committee (hereinafter referred to as “the Committee”) which shall consist of—



(1) (d) Delete the word  
“Complaints Committee” and  
substitute therefor the word  
“the Committee”.

(2) Delete the word  
“Complaints Committee” and  
substitute thereof the word  
“the Committee”.

(4) Delete the word  
“Complaints Committee” and  
substitute thereof the word  
“the Committee”.

(5) Delete the word  
“Complaints Committee” and  
substitute thereof the word  
“the Committee”.

Insert the following new  
subsection—

(5A) The Public  
Service Commission  
shall provide sufficient  
staff to be the  
Secretariat of the  
Committee.

(6) Delete the word  
“Complaints Committee” and  
substitute therefor the word “  
the Committee”.

s. 32 Delete the word  
“Complaints Committee”  
wherever it occurs and  
substitute thereof the word “  
the Committee”.

s. 33 Delete the word  
“Complaints Committee”



wherever it occurs in subsection (1) and (2) and substitute thereof the word “the Committee”.

s. 34 Delete the word “Complaints Committee” wherever it occurs and substitute thereof the word “the Committee”.

s. 35 (1) Delete the word “Complaints Committee” wherever it occurs and substitute thereof the word “the Committee”.

s. 36 Delete the word “Complaints Committee” wherever it occurs in subsections (1) and (2) and substitute thereof the word “the Committee”.

The Central Depositories Act, 2000 (No. 4 of 2000). s. 63 Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The Copyright Act (No. 12 of 2001) s. 2 Delete the definition of “collective management organizations” and substitute therefor the following new definition-

“collective management organization” means an organization approved and authorized by the Board which has as its main object, or one of its main objects, the negotiating for the license fees for the use of copyright



work, distribution of royalties and the granting of licences in respect of the use of copyright works or related rights;

**New**

Insert the following new section immediately after section 30-

**Equitable  
Remuneration**

**30A (1)**

Where a sound recording is published for commercial purposes, or a reproduction of such phonograms is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer.

(2) Unless otherwise agreed between



the performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.

(3) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication, provided that the phonogram is still protected under the Act.

(4) For the purposes of this section, phonograms that have been available to the public by wireless means



in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered to have been published for commercial purposes.

(5) A performer shall have the unwaivable and untransferable rights to receive equitable remuneration or royalties in respect of any broadcast, communication to the public, rental or making available to the public of his performance fixed in an audiovisual fixation to be managed through the relevant collective



management  
organization.

(6) The  
right to an  
equitable  
remuneration  
under this  
section shall  
subsist from the  
date of  
publication of  
the audiovisual  
performance  
until the end of  
the fiftieth  
calendar year  
following the  
year of  
publication,  
provided that  
the audiovisual  
work or  
performance is  
still protected  
under the Act.

s.30B (1) Insert the word  
“authors” immediately before  
the word “performers”;

(2) Insert the word  
“authors” immediately before  
the word “performers”;

(3) Insert the word  
“authors” immediately before  
the word “performers”;

s.46 (1) Delete and substitute  
therefor the following new  
subsection-



No person or association of persons shall commence or carry on the business as a collective managements organization unless registered as such by the Board and granted operating license;

- 46 (3) Delete the expression “twelve months” and substitute therefor the expression “thirty-six months”;

- 46 (4) Insert the words “and is registered as a Collective Management Organization by the Board” at the end of paragraph (a);

Delete paragraph (d) and substitute therefor the following new paragraph-

- (d) its main object, or one of its main objects, is negotiating for the licence fees for the use of copyright works and the granting of licences in respect of the use of copyright works or related rights;



Insert the following new subsections immediately after subsection (12)-

(13) An organization registered in accordance with subsection (4)(a) may apply to the Board in the prescribed manner for an operating licence.

(14) Where a collective management organization operating licence is revoked, the approved collecting agent shall in conjunction with the Board open and operate an escrow account to hold monies not immediately available for utilization or distribution until the operating license is reinstated or a new organization is licensed by the Board.

(15) During the period of revocation under subsection (14), the agency shall continue to collect and remit royalties to rights holders.

s.46A

Renumber the existing provision as subsection (1) and insert the following new subsection-

(2) A licensed collective management organization shall appoint an agency approved by the Board to

collect and distribute royalties on their behalf through the National Rights Registry.

(3) The agency appointed under subsection (2) shall collect royalties on such terms and conditions as may be agreed upon between their and the collective Management Organization subject to approval of such terms by the Board.

s.46B

Insert the following new subsection immediately after subsection (1) –

(1A) In addition to the members provided for under subsection (1), there shall be co-opted into the Board of directors of a collective management organization at least four persons who hold professional qualifications recognized by a professional body established under the relevant law.

Insert the following new subsections immediately after subsection (4)-

(5) The members of the Board of a collective management organization shall be



eligible to such salaries, honorariums, and other allowances as may be approved by members in a general meeting and endorsed by the Board.

(6) A person who has been convicted of an offence under this Act or any law relating to the management of any company or organization or of a felony shall not be eligible to hold office as a director or to be employed as a member of the staff of a collective management organization.

(7) Where a person who is a member of the board of a collective management organization or a member of its staff is charged with an offence under this Act or any other law relating to the management of any company or organization or of a felony such person shall step aside from his or her position until the matter is heard and determined.

(8) A person to whom subsection (7)

applies shall during the hearing of the case be entitled to receive half of his or her basic pay and if acquitted of the offence shall be paid the outstanding amount, and may with the concurrence of the members of the organization be reinstated to his or her respective position in the Board.

(9) The payment of royalties by the collective management organization shall be automated and based on monitoring data and conducted in accordance with such conditions as the Board may from time to time prescribe.

s.46C

Insert the following new subsection immediately after subsection (1)–

(1A) Notwithstanding subsection (1), the Board may issue a licence for one entity to represent the rights of all parties within a sector.

s.46E

(6) Insert the following new paragraph immediately after paragraph (g)–

(h) at any other time



when the Board considers it appropriate to do so in the best performance of its functions under this Act.

Insert the following subsections immediately after subsection (6)-

(7) Any member or director of a collective management organization who approves accounts beyond the limits directed by the Board commits an offence and shall on conviction be liable to a fine not exceeding five times the amount in excess of the allowed amount or imprisonment for a term not exceeding three months or to both.

(8) A collective management organization shall only operate bank accounts authorized and monitored by the Board.

The	s. 25A (1)	Delete the expression
Anti-Corruption		"Attorney-General" and
and Economic		substitute therefor the



Crimes  
Act, 2003  
(No. 3 of 2003).

expression “Director of  
Public Prosecutions”.

s. 37 (6)

Delete the expression  
“Attorney-General” and  
substitute therefor the  
expression “Director of  
Public Prosecutions”.

s. 62 (5)

Delete the expression “the  
Attorney General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions.”

s. 62

Delete subsection (6).

Insert the following new  
subsections—

(6A) Notwithstanding  
the provisions of any  
other law, where a state  
officer is under  
investigation for, or has  
been charged with  
corruption or economic  
crime, the Commission  
may, by an *ex parte*  
application in the High  
Court, seek for an order  
barring the officer from  
accessing his or her office  
or exercising the powers  
of that office including  
participating in decision  
making, voting and  
supervising staff.

(6B) The provisions of  
subsection (6A) shall  
apply where the



Commission upon preliminary investigations has established grounds to reasonably suspect that the public or state officer is likely to—

- (a) conceal, alter, destroy, or remove records, documents or other evidence;
- (b) intimidate, threaten or otherwise interfere with witnesses; or
- (c) interfere with investigations in any other manner.

The Sexual Offences Act, 2006 (No. 3 of 2006).

s. 40

Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The National Museums and Heritage Act, 2006 (No. 6 of 2006).

s. 57 (2)

Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The Labour Institutions Act, 2007 (No. 12 of 2007).

s. 35 (1) (k)

Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

The Accountants

s. 43

Delete the expression “Attorney-General” and



Act, 2008  
(No. 15 of  
2008). substitute therefor the  
expression "Director of  
Public Prosecutions".

The s. 5 Delete the expression  
International Crimes  
Act, 2008 "Attorney-General" and  
(No. 16 substitute therefor the  
of 2008). expression "Director of  
Public Prosecutions".

s. 19 (2) Delete the expression  
"Attorney-General" and  
substitute therefor the  
expression "Director of  
Public Prosecutions".

s. 19 (3) Delete the expression  
"Attorney-General" and  
substitute therefor the  
expression "Director of  
Public Prosecutions".

s. 21 (1) (b) Delete the expression  
"Attorney-General" and  
substitute therefor the  
expression "Director of  
Public Prosecutions".

s. 23 (2) Delete the expression  
"Attorney-General" and  
substitute therefor the  
expression "Director of  
Public Prosecutions".

s. 24 Delete the expression  
"Attorney-General" wherever  
it appears and substitute  
therefor the expression  
"Director of Public  
Prosecutions".

s. 25 (3) (a) Delete the expression  
"Attorney-General" and



substitute therefor the expression “Director of Public Prosecutions”.

s. 26 (1) Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

s. 26 (2) Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

s. 76 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 77 (2) Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 78 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 79 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.



s. 84               Delete the expression  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions”.

s. 85 (4)           Delete the expression  
“Attorney-General” and  
substitute therefor the  
expression “Director of  
Public Prosecutions”.

s. 86               Delete the expression  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions”.

s. 87 (1)           Delete the expression  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions”.

s. 88               Delete the expression  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions”.

s. 89               Delete the expression  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions”.

s. 90               Delete the expression  
“Attorney-General” and  
substitute therefor the



expression “Director of Public Prosecutions”.

s. 91 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 92 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 93 (2) (b) Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 94 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 95 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 96 (1) Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.



- s. 96 (2) Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.
- s. 102 (2) Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.
- s. 102 (3) Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.
- s. 103 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.
- s. 104 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.
- s. 105 Delete the expression “Attorney-General” wherever they appear and substitute therefor the expression “Director of Public Prosecutions”.
- s. 106 Delete the expression “Attorney-General” and substitute therefor the



expression “Director of Public Prosecutions”.

s. 107 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 108 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 109 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 110 Delete the expression “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 111 Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

s. 112 (1) Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

s. 112 (3) Delete the expression “Attorney-General” and



substitute therefor the  
expression "Director of  
Public Prosecutions".

s. 112 (4) Delete the expression  
"Attorney-General" and  
substitute therefor the  
expression "Director of  
Public Prosecutions".

s. 113 (2) Delete the expression  
"Attorney-General" and  
substitute therefor the  
expression "Director of  
Public Prosecutions".

s. 113 (3) Delete the expression  
"Attorney-General" and  
substitute therefor the  
expression "Director of  
Public Prosecutions".

s. 114 (1) Delete the expression  
"Attorney-General" and  
substitute therefor the  
expression "Director of  
Public Prosecutions".

s. 114 (2) Delete the expression  
"Attorney-General" and  
substitute therefor the  
expression "Director of  
Public Prosecutions".

s. 115 (1) Delete the expression  
"Attorney-General" and  
substitute therefor the  
expression "Director of  
Public Prosecutions".

s. 116 Delete the expression  
"Attorney-General" and  
substitute therefor the  
expression "Director of  
Public Prosecutions".



s. 118 (2) Delete the expression  
“Attorney-General” and  
substitute therefor the  
expression “Director of  
Public Prosecutions”.

s. 119 Delete the expression  
“Attorney-General”  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions”.

s. 120 Delete the expression  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions”.

s. 121 (b) Delete the expression  
“Attorney-General” and  
substitute therefor the  
expression “Director of  
Public Prosecutions”.

s. 122 Delete the expression  
“Attorney-General” and  
substitute therefor the  
expression “Director of  
Public Prosecutions”.

s. 124 Delete the expression  
“Attorney-General” and  
substitute therefor the  
expression “Director of  
Public Prosecutions”.

s. 126 Delete the expression  
“Attorney-General”  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression



“Director of Public Prosecutions”.

s. 127 (6) Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

s. 129 Delete the expression “Attorney-General” “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 153 (1) Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”.

s. 153 (2) Delete the words “Attorney-General” and substitute therefor the words “Director of Public Prosecutions”.

s. 154 Delete the expression “Attorney-General” “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.

s. 155 Delete the expression “Attorney-General” “Attorney-General” wherever it appears and substitute therefor the expression “Director of Public Prosecutions”.



s. 156           Delete the expression  
“Attorney-General” and  
substitute therefor the  
expression “Director of  
Public Prosecutions”.

s. 157           Delete the expression  
“Attorney-General”  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions”.

s. 158           Delete the expression  
“Attorney-General”  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions”.

s. 159           Delete the expression  
“Attorney-General”  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions”.

s. 160           Delete the expression  
“Attorney-General”  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions”.

s. 168           Delete the expression  
“Attorney-General” wherever  
it appears and substitute  
therefor the expression  
“Director of Public  
Prosecutions”.



- |  |           |  |
|--|-----------|--|
|  | s. 171    | Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions". |
| The Biosafety Act, 2009 (No. 2 of 2009).                         | s. 53     | Delete the expression "Attorney-General" and substitute therefor expression "Director of Public Prosecutions".                         |
| The Merchant Shipping Act, 2009 (No. 4 of 2009).                 | s. 16     | Delete.  |
| The Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2010). | s. 18 (1) | Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".                     |
| The Prevention of Organised Crimes Act, 2010 (No. 6 of 2010).    | s. 14     | Delete the words "five hundred thousand shillings" and substitute therefor the words "ten million shillings."                          |
|  | s. 15 (1) | Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".                     |
|  | s. 15 (2) | Delete the expression "Attorney-General" and substitute therefor the   |



expression “Director of Public Prosecutions.

s. 15 (3) Delete the words “thirty days” and substitute therefor the words “ninety days”.

s. 17 (9) Delete paragraph (b) and substitute therefor the following new paragraph—

(b) Inspector-General.

s. 17 (9) (c) Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions.”

The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010).

s. 19 (2) (e) Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions.

The Judicial Service Commission Act, 2011 (No. 1 of 2011).

s. 38 Insert the following new subsection immediately after subsection (1)—

(1A) The Commission shall submit the annual report to the President and the National Assembly within six months after the end of the year to which it relates.

The Independent Electoral

s. 24 (1) Delete the word “three” and substitute therefor the word “six”.



and Boundaries  
Commission  
Act (No. 9 of  
2011).

The Salaries      s. 24  
and  
Remuneration  
Commission  
Act, 2011  
(No. 10  
of 2011).

Insert the following new  
subsection immediately after  
subsection (1)—

(1A)                      The  
Commission              shall  
submit the annual report  
in subsection (1) to the  
President      and      the  
National      Assembly  
within six months after  
the end of the year to  
which it relates.

The                      s. 53  
Kenya  
National  
Commission  
on  
Human  
Rights,  
2011 (No. 14  
of 2011).

Insert the following new  
subsection immediately after  
subsection (1)—

(1A)                      The  
Commission              shall  
submit the annual report  
in subsection (1) to the  
President      and      the  
National      Assembly  
within six months after  
the end of the year to  
which it relates.



The  
National  
Gender  
and  
Equality  
Commission,  
2011 (No. 15  
of 2011).

s. 53

Insert the following new  
subsection immediately after  
subsection (1)—

(1A) The  
Commission shall  
submit the annual report  
in subsection (1) to the  
President and the  
National Assembly  
within six months after  
the end of the year to  
which it relates

The  
Commission  
on  
Revenue  
Allocation,  
2011 (No.  
16 of 2011).

s. 23

Re-number the existing  
provision as subsection (1).

Insert the following new  
subsection immediately after  
subsection (1)—

(1A) The  
Commission shall  
submit the annual report  
in subsection (1) to the  
President and the  
National Assembly  
within six months after  
the end of the year to  
which it relates.



The Ethics and Anti-Corruption Commission Act (No. 22 of 2011). s. 27 (2) Delete the word “three” and substitute therefor the word “six”.

The Tourism Act, 2011 (No. 28 of 2011). s. 116 Delete the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions.”

The National Police Service Commission Act (No. 30 of 2011). s. 26 (2) Delete the word “three” and substitute therefor the word “six”.

The National Land Commission Act (No. 5 of 2012). s. 33 Insert the following new subsection immediately after subsection (1)—

(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.

The Leadership and Integrity Act, 2012 (No. 19 of 2012). s. 12A Insert the words “or public office” after the words “state office.”



Renumber the existing provision as subsection (1) and insert the following new subsections—

(2) Where a public entity is recruiting staff, it shall, within seven days after shortlisting of candidates for any position for which appointment is considered, submit the list of all the shortlisted candidates to the Commission for integrity suitability verification.

(3) The Commission shall upon receipt of the list of shortlisted candidates verify the information regarding them and make recommendations to the public entity on the integrity suitability of the shortlisted persons.

(4) In making recommendations under subsection (3), the Commission may consider any other information with respect to the integrity suitability of the applicant.

(5) The recruiting entity shall take into account the recommendations on the integrity suitability of the candidates in making appointment decisions.

s. 19 (6)

Delete the words “fail to submit annual statements of account” and substitute



therefor the words “fails to submit statements of account annually as required under section 19 (3)”.

s. 40

Renumber the existing provision as subsection (1) and insert the following new subsection—

(2) The High Court may upon application by any person, declare the assumption of office by a state officer to be invalid for want of executing a commitment to the specific leadership and integrity code.

The  
Teachers  
Service  
Commission  
Act, 2012  
(No. 20  
of 2012).

s. 41

Insert the following new subsection immediately after subsection (1)—

(1A) The Commission shall submit the annual report in subsection (2) to the President and the National Assembly within six months after the end of the year to which it relates.

The  
National  
Transport  
and  
Safety  
Authority,  
2012 (No. 33  
of 2012).

s. 16

Delete the word “three” and substitute therefor the word “five”



The Value Added Tax Act, 2013 (No. 35 of 2013).	Part I of the First Schedule	Delete the expression “3926.90.99” appearing in item 133 and substitute therefor the expression “3926.90.90”.
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The Excise Duty Act, 2015 (No. 23 of 2015).	Paragraph 1 of Part I of the First Schedule	Delete—  (a) the expression “3905.91.00 Emulsion VAM” and substitute therefor the expression “3905.91.00 Imported copolymers”;  (b) the expression “3905.19.00 Homopolymers” and substitute therefor the expression “3905.19.00 Imported polymers”; and  (c) the expression “3906.90.00 Emulsion B.A.M.” and substitute therefor the expression “3906.90.00 Imported acrylic polymers”.
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Kenya Roads Board Act, 1999 (No. 7 of 1999)	s.7(1)(g)  (1)(h)	Delete.  Delete the word “eight” and substitute therefore the word “five”.
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The  
Controller  
of Budget  
Act, 2016  
(No. 26  
of 2016).

s. 19

Insert the following new  
subsection immediately after  
subsection (2)—

(2A) The  
Commission shall  
submit the annual report  
in subsection (2) to the  
President and the  
National Assembly  
within six months after  
the end of the year to  
which it relates.

The  
Miscellaneous  
Fees and  
Levies  
Act, 2016  
(No. 29  
of 2016).

s. 9B (b)

Insert the words “and  
levies” immediately after the  
words “on fees”.

The Water  
Act, 2016  
(No. 43  
of 2016).

s. 14 (1) (f)

Insert the following new  
paragraph immediately after  
paragraph (e)—

(ea) the Attorney-  
General or his  
representative;

s. 17 (1)

Insert the words “and in  
accordance with the  
guidelines made by the  
Salaries and Remuneration  
Commission” immediately  
after the word “appointment.”

s. 31 (1)

Delete and substitute  
therefor the following new  
subsection—



(1) The powers and functions of the Water Storage Authority shall be exercised and performed under the direction of a Water Harvesting and Storage Board which shall consist of—

- (a) a chairperson, who shall be appointed by the President;
- (b) the Principal Secretary responsible for matters relating to finance or his representative;
- (c) the Principal Secretary responsible for matters relating to water or his representative;
- (d) the Principal Secretary responsible for matters relating to land;
- (e) five other members appointed by the Cabinet Secretary; and
- (f) the Chief Executive Officer.



s. 33 (1) Delete the words “the Cabinet Secretary for Public Service may determine on the advice of the Salaries and Remuneration Commission” and substitute therefor the words “may be specified in the instrument of appointment and in accordance with the guidelines made by the Salaries and Remuneration Commission.”

s. 66 (1) Delete and substitute therefor the following new subsection—

(1) Each water works development agency shall consist of—

- (a) a chairperson, who shall be appointed by the President;
- (b) the principal Secretary responsible for matters relating to finance or his representative;
- (c) the Principal Secretary responsible for matters relating water or his representative;
- (d) the Attorney-General or his representative;



(e) the Chief Executive Officer; and

(f) six other members who shall be appointed by the Cabinet Secretary from counties within the basin area.

s. 66                      Insert the following new subsection immediately after subsection (2)—

(3) The Cabinet Secretary shall, on the recommendation of the respective Board of Water Development Agency appoint a Chief Executive Officer of the respective water works agency on such terms and conditions as may be specified in the instrument of appointment and in accordance with the guidelines made by the Salaries and Remuneration Commission.

s. 71 (1)                Delete and substitute therefor the following new subsection—

(1) The powers and functions of the Regulatory Board shall



be exercised and performed under the direction of the Regulatory Board, which shall consist of—

- (a) a chairperson, who shall be appointed by the President;
- (b) the Principal Secretary responsible for matters relating to finance or his representative;
- (c) the Principal Secretary responsible for matters relating to Water or his representative;
- (d) the Attorney-General or his representative;
- (e) the Chief Executive Officer; and
- (f) six other members appointed by the Cabinet Secretary.

s. 73(1)

Delete the words “the Cabinet Secretary for Public Service may determine on the advice of the Salaries and Remuneration Commission” and substitute therefor the words “may be specified in the instrument of appointment and in



accordance with the guidelines made by the Salaries and Remuneration Commission.”

s. 115 (2) Delete and substitute therefor the following new subsection—

(2) The Board of Trustees shall consist of—

(a) a chairperson, who shall be appointed by the President;

(b) the Principal Secretary responsible for matters relating to finance or his representative;

(c) the Principal Secretary responsible for matters relating to Water or his representative;

(d) the Attorney-General or his representative;

(e) the Chief Executive Officer; and

(f) six other members recruited in accordance with the First Schedule and appointed by the Cabinet Secretary.

s. 118 (1) Delete and substitute therefor the following new subsection—



(1) The Fund shall have a Chief Executive Officer who shall be appointed by the Cabinet Secretary on the recommendation of the Board of Trustees on such terms and conditions of service as may be specified in the instrument of appointment and in accordance with the guidelines made by the Salaries and Remuneration Commission.

The  
Bribery  
Act, 2016  
(No. 47  
of 2016).

- s. 1 Delete the expression “Bribery Act” and substitute thereof the expression “Anti-Bribery Act”.
- s. 4 Insert the words “public entity” immediately after the words “public officers”.
- s. 5 Delete the word “who” and substitute therefor the words “if the person offering, promising or giving knows”
- s. 7 (1) Delete the word “and”  
(a) (v) and substitute therefor the word “or”.
- s. 7 (1) Delete the word “and”  
(b) (i) and substitute therefor the word “or”.
- s. 10 Delete the marginal note and substitute therefor the words “bribery by a private entity”.



	s. 14 (1)	Delete the words “holding a position of authority”.
	s. 15 (1)	Delete the words “within the meaning of sections 11 and 12”.
The Public Service Commission Act, 2017 (No. 10 of 2017).	s. 90 (1)	Delete the word “three” and substitute therefor the word “six”.
The Scrap Metal Act, 2015 (No. 1 of 2015)	s.2	<p>Insert the following new definitions in proper alphabetical sequence —</p> <p>“Authority” means the Kenya Revenue Authority established under section 3 of the Kenya Revenue Authority Act;</p> <p>“critical national infrastructure” means physical and virtual assets or facilities, whether owned by private or public entities which are essential to the provision of vital services to the public for their social and economic wellbeing, and which if destroyed, degraded or rendered unavailable, would impact on the social or economic wellbeing of the nation or affect the government’s ability to undertake national defence and security;</p>



“electrical rewinder” means a person who deals in the repair or rewinding of electric motors;

“smelter” means an installation or factory for smelting metal from its ore or means a person engaged in the business of smelting”; and

“steel fabricators” means an installation or factory for the production of metal structures using a range of processes such as cutting, bending or assembling, which generates scrap metal in their processes.

s.4(1) Insert the following new paragraph immediately after paragraph (e) —

(ea) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance or his or her representative.

s. 4(1)(f)(i) Delete the word “the” and substitute therefor the word “a”.

s. 4(1)(f)(v) Delete.

s. 6(1)(a)(ii) Delete the word “utility” and substitute therefor the words “critical national”.



s. 9(1)                Insert the word “a” immediately after the word “of”.

s. 11                 Renumber the provision as 11(1).

                        Insert the following new sub sections immediately after sub section (1) —

                        (2) Notwithstanding subsection (1), the Cabinet secretary shall issue a special licence for dealing in copper, aluminium and their alloys.

                        (3) An application for a special licence shall be made in accordance with section 10.

s. 18(3)(a)           Delete the words “one million” and substitute therefor the words “five million”.

s. 18(3)(b)           Delete the word “five” and substitute therefor the word “ten”.

s. 20(4)               Delete the word “one” and substitute therefor the word “five”.

s. 22(2)               Delete the words “one million” and substitute therefor the words “five million”.

s. 24(1)               Insert the words “critical national” immediately after the word “the”.

                        Insert the following new sections immediately after section (1) —



(1A) A state entity responsible for critical national infrastructure shall dispose scrap metal from critical national infrastructure to the Numerical Machining Complex and the Kenya Shipyard Limited for smelting into billets.

(1B) Where there is inadequate capacity at the Numerical Machining Complex and Kenya Shipyard Limited, the respective state entity through a written consent from the Numerical Machining Complex and the Kenya Shipyard Limited, shall seek approval from the Council to partner with a local smelter directly without involving a broker.

s. 24(2) Delete the word “ten” and substitute therefor the word “twenty”.

Delete the word “three” and substitute therefor the word “seven”.

s. 26(1) Insert the words “or import” immediately after the word “export”.

s. 26(2) Insert the words “or import” immediately after the word “export”.

s. 26(3) Insert the words “in consultation with the Authority.” immediately after



the word “Secretary”.

- s. 26                      Insert the following new  
sub section immediately after  
sub section (3) —

(3A) The certificate  
issued under subsection  
(3) shall indicate the  
nature, quantity and  
consideration for scrap  
metal to ensure  
compliance with the  
approved limits.

- s. 30(1)(a)              Insert the words “critical  
national” immediately after  
the word “vandalized”.

- s. 30(1)(e)(ii)              Insert the words  
“smelter, electrical rewinder,  
steel fabricator” immediately  
after the word “miller”.

The Energy  
Act, 2019  
(No. 1 of  
2019)

- s.2                      Delete the definitions of  
the term “distribution  
licence”.

Insert the following new  
definition in proper  
alphabetical sequence—

“distribution licence”  
means a document or  
instrument authorising a  
person to distribute energy in  
the manner described in the  
document or instrument, in  
that person's authorised area  
of supply for the purpose of  
enabling supply to premises  
in that area and to also  
receive bulk supply from



another licensee;

New

Insert the following new section immediately after section 6 —

National  
Energy  
Efficiency  
and  
Conservation  
Action Plan

**6A.** The Cabinet Secretary, in consultation with the relevant statutory authorities and stakeholders, shall coordinate the development and implementation of a national energy efficiency and conservation action plan.

s. 10 (a) (i) Delete the words “with the exception of crude oil”.

s. 10 (a) (ii) Delete and substitute therefor the following new paragraph—

(11) make proposals to the Cabinet Secretary for purposes of making regulations on energy efficiency and conservation.

s. 12 (1) (e) Delete.

s. 20 (1) Delete the phrase “half of a” appearing in paragraph



(a).

s. 20                Delete the word “levies”  
appearing in the proviso.

s. 26 (4)           Insert the word “of”  
immediately after the word  
“terms”.

s. 45 (1)(d)        Delete the words “who  
shall be the Secretary to the  
Board”.

s. 45 (1) (e)       Delete the word “three”  
and substitute therefor the  
word “seven”.

s. 45                Delete paragraph (f).

s.76 (2)            Insert the following new  
paragraph immediately after  
paragraph (g) —

(h) the Managing  
Director of  
Kenya Power  
and Lighting  
Company PLC  
or his or her  
representative.

s.82                Delete the word  
“Authority” and substitute  
therefor the expression  
“Renewable Energy Resource  
Advisory Committee”.

s.98 (1) (d)        Insert the word “with”  
immediately after the word  
“compliance”.

s.100 (1) (b)       Insert the word “of”  
immediately after the word  
“type”.

s.117                Delete the word “one”



and substitute therefor the words “one half of a”.

s.129 (2) Delete the word “three” and substitute therefor the word “four”.

s.149 (3) Delete the word “licence” and substitute therefor the word “certificate”.

s.154 (2) Delete the word *Proviso* “meters” and substitute therefor the word “metres”.

s.166 (3) Delete and substitute therefor the following new subsection—

(3) For the avoidance of doubt, the licensee shall not be liable to any penalty under subsection (1) or to pay compensation under subsection (2) if the failure, poor quality or irregularity of electricity supply was caused by third party interference to the licensee’s electricity supply lines, or by inevitable accident or force majeure, or was so slight as not to materially affect the quality or value of the supply.

s.166 (4) Delete and substitute with the following new subsection—

(4) The Cabinet Secretary may make regulations to give effect to this section



subject to the grid  
attaining the quality and  
reliability of supply and  
service as prescribed by  
the Authority.

s.167 (1) Delete the expression  
“(1)”.

s.167 (1) Delete the word  
“electrician” appearing in  
paragraph (0) and substitute  
therefor the words “electrical  
worker”.

s.169 (2) Delete and substitute  
therefor the following new  
subsection—

(2) Any vessel that  
is used to convey the  
vandalised or stolen  
equipment or appliances  
referred to in subsection  
(1) shall be forfeited to  
the State.

s.187 Delete the words  
“coordinate the development  
and implementation of a” and  
substitute therefor the words  
“develop and implement”.

s.199 (1) Insert the word  
“gazette” immediately after  
the words “by notification in  
the”.

s.208 Delete the phrase “on  
the recommendation of” and  
substitute therefor the phrase  
“in consultation with”.



## **MEMORANDUM OF OBJECTS AND REASONS**

The Statute Law (Miscellaneous Amendments) Bill, 2022 seeks to make various amendments to various statutes. It is in keeping with the practice of making minor amendments which do not merit the publication of separate Bills into one Bill.

The Bill contains proposed amendments to the following statutes—

### **1. The Vexatious Proceedings Act (Cap 41)**

The Bill proposes to amend the Vexatious Proceedings Act in order to harmonise its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

### **2. The Penal Code (Cap.63)**

The Bill proposes to amend section 146 of the Penal Code by deleting expressions therein that may be perceived to be discriminatory towards persons with mental disabilities.

### **3. The Criminal Procedure Code (Cap. 75)**

The Bill proposes to amend the Criminal Procedure Code to harmonise the terms therein with the provisions of the Constitution and the National Police Service Act, 2011. It additionally proposes to amend the Act to allow the Director of Public Prosecution to delegate his powers to specified officers and to delete offences provided for in the Sexual Offences Act, 2006.

### **4. The Extradition (Commonwealth Countries) Act (Cap. 77)**

The Bill proposes to amend the Extradition (Commonwealth Countries) Act to harmonise its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

### **5. The Evidence Act (Cap 80)**

The Bill proposes to amend the Evidence Act to expand the definition of "photograph" by allowing the presentation and admissibility of digital photographs in line with current technological advancements. It also seeks to delete expressions in the Act which may be perceived to be discriminatory towards persons with mental disabilities.

### **6. The National Flag, Emblems and Names Act (Cap.99)**

The Bill proposes to amend the National Flag, Emblems and Names Act to harmonise its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.



### **7. The Official Secrets Act (Cap.187)**

The Bill proposes to amend the Official Secrets Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

### **8. The Geneva Conventions Act (Cap.198)**

The Bill proposes to amend the Geneva Conventions Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

### **9. The Pharmacy and Poisons Act (Cap.244)**

The Bill proposes to amend the Pharmacy and Poisons Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

### **10. The Mental Health Act (Cap. 248)**

The Bill proposes to amend the Mental Health Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

### **11. The Land Consolidation Act (Cap. 283)**

The Bill proposes to amend the Land Consolidation Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

### **12. The Land Adjudication Act (Cap.284)**

The Bill proposes to amend the Land Adjudication Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

### **13. The Marine Insurance Act (Cap.390)**

The Bill proposes to amend the Marine Insurance Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

### **14. The Local Manufactures (Export Compensation) Act (Cap.482)**

The Bill proposes to amend the Local Manufactures (Export Compensation) Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.



**15. The Capital Markets Act (Cap. 485A)**

The Bill proposes to amend the Capital Markets Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

**16. The Architects and Quantity Surveyors Act (Cap. 525)**

The Bill proposes to amend the Architects and Quantity Surveyors Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

**17. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)**

The Bill proposes to amend the Prevention of Fraud (Investments) Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

**18. The Higher Education Loans Board Act, 1995 (No.3 of 1995)**

The Bill proposes to amend the Higher Education Loans Board Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

**19. The Retirement Benefits Act, 1997 (No. 3 of 1997)**

The Bill proposes to amend the Retirement Benefits Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

**20. Co-operative Societies Act, 1997 (No. 12 of 1997)**

The Bill proposes to amend the Co-operative Societies Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

**21. The Central Depositories Act, 2000 (No. 4 of 2000)**

The Bill proposes to amend the Central Depositories Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

**22. The Copyright Act, 2001 (No. 12 of 2001)**

The Bill proposes to amend the Copyright Act, 2001 to make provisions for the equitable remuneration of performers and producers of sound recordings and expand the responsibilities of collective management organisations towards the authors and performers. It also proposes to bring collective management organisations under regulation by the Board in order to enhance their efficiency.



**23. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)**

The Bill proposes to amend the Anti-Corruption and Economic Crimes Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution. It also proposes to amend the Act to allow the Commission to seek for a court order for a State Officer under investigation or charged with corruption or economic crimes to be barred from accessing their office or exercising powers of that office where the public officer is likely to interfere with investigations in any way.

**24. The Sexual Offences Act, 2006 (No. 3 of 2006)**

The Bill proposes to amend the Sexual Offences Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

**25. The National Museums and Heritage Act, 2006 (No.6 of 2006)**

The Bill proposes to amend the National Museums and Heritage Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

**26. The Labour Institutions Act, 2007 (No. 12 of 2007)**

The Bill proposes to amend the Labour Institutions Act, to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

**27. The Accountants Act, 2008 (No. 15 of 2008)**

The Bill seeks to amend the Accountants Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

**28. The International Crimes Act, 2008 (No. 16 of 2008)**

The Bill proposes to amend the International Crimes Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

**29. Biosafety Act, 2009 (No. 2 of 2009)**

The Bill proposes to amend the Biosafety Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.



**30. The Merchant Shipping Act, 2009 (No. 4 of 2009)**

The Bill proposes to amend the Merchant Shipping Act by deleting section 16 which restricts ship owners from providing the following services in the maritime industry: crewing agencies, pilotage, clearing and forwarding agencies, port facility operator, shipping agent, terminal operator, container freight station, quay side service provider, general ship contractor, haulage, empty container depots, ship chandler or such other services. This was following the declaration of the section as unconstitutional by the High Court in September, 2020 and to allow for the revival of the Kenya National Shipping Line.

**31. The Prevention of Organised Crimes Act, 2010 (No. 6 of 2010)**

The Bill proposes to amend the Prevention of Organised Crimes to harmonise the provisions of the Act with the provisions of Article 157 of the Constitution relating to the functions of the Director of Public Prosecutions. It seeks to enhance the penalty for organized crimes and to extend the period in which an order obtained in relation to tracing of property shall lapse. It also seeks to apply the term “Inspector-General” as authorised officer in place of “Commissioner of Police”.

**32. The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)**

The Bill proposes to amend the Counter-Trafficking in Persons Act to harmonise the provisions of the Act with the provisions of Article 157 of the Constitution relating to the functions of the Director of Public Prosecutions.

**33. The Judicial Service Commission Act, 2011 (No.1 of 2011)**

The Bill seeks to amend the Judicial Service Commission Act to require the presentation of the Annual report within six months after the end of the year to which it relates.

**34. The Independent Electoral and Boundaries Commission Act, 2011 (No.9 of 2011)**

The Bill seeks to amend the Independent Electoral and Boundaries Commission Act to require the presentation of its annual report within six months to the end of the year to which it relates.

**35. The Salaries and Remuneration Commission Act, 2011 ( No.10 of 2011)**

The Bill seeks to amend the Salaries and Remuneration Commission Act to require the presentation of its annual report within six months to the end of the year to which it relates.



**36. The Kenya National Commission on Human Rights Act, 2011 (No.14 of 2011)**

The Bill seeks to amend the Kenya National Commission on Human Rights Act to require the presentation of its annual report within six months to the end of the year to which it relates.

**37. The National Gender and Equality Commission Act, 2011 (No.15 of 2011)**

The Bill seeks to amend the National Gender and Equality Commission Act to require the presentation of its annual report within six months to the end of the year to which it relates.

**38. The Commission on Revenue Allocation Act, 2011 ( No.16 of 2011)**

The Bill seeks to amend the Commission on Revenue Allocation Act to require the presentation of its annual report within six months to the end of the year to which it relates.

**39. The Ethics and Anti-Corruption Commission Act, 2011 (No.22 of 2011)**

The Bill seeks to amend the Ethics and Anti-Corruption Commission Act to require the presentation of its annual report within six months to the end of the year to which it relates.

**40. The Tourism Act, 2011 (No.28 of 2011)**

The Bill proposes to amend the Tourism Act to harmonise the provisions of the Act with the provisions of Article 157 of the Constitution relating to the functions of the Director of Public Prosecutions.

**41. The National Police Service Commission Act, 2011 (No.30 of 2011)**

The Bill seeks to amend the National Police Service Commission Act to extend the period of presentation of its annual report to six months after the expiry of the year to which it relates.

**42. The National Land Commission Act, 2012 (No.5 of 2012)**

The Bill seeks to amend the National Land Commission Act to require the presentation of its annual report within six months to the end of the year to which it relates.

**43. Leadership and Integrity Act, 2012 (No. 19 of 2012)**

The Bill proposes to amend the Leadership and Integrity Act to allow the Ethics and Anti-Corruption Commission to verify the suitability of



candidates intending to apply to be appointed to a public entity and to make recommendation to the recruiting entity on the integrity suitability of the candidates. It additionally proposes to allow the High Court on application by any person, to declare the assumption of office by a state officer to be invalid for want of executing a commitment to the specific Leadership and Integrity Code.

**44. The Teachers Service Commission Act, 2012 (No.20 of 2012)**

The Bill proposes to amend the Teacher Service Commission Act to require the presentation of its annual report to be done within six months after the expiry of the year to which it relates.

**45. The National Transport and safety Authority Act, 2012 (No.33 of 2012)**

The Bill proposes to amend the National Transport and Safety Authority Act to provide for the appointment of the Director-General for a renewable period of five years instead of three.

**46. Kenya Law Reform Commission Act, 2013 (No.35 of 2013)**

The Bill proposes to amend the Kenya Law Reform Commission Act to clarify the provisions on the attendance of ex-officio members at meetings of the Commission.

**47. The Value Added Tax Act, 2013 (No.35 of 2013)**

The Bill proposes to amend the First Schedule to the Value Added Tax Act to correct a mistake in a tariff number.

**48. The Excise Duty Act 2015 (No.23 of 2015)**

The Bill proposes to amend the First Schedule to the Excise Duty Act to correct a mistake in a tariff number.

**49. Kenya Roads Board Act, 1999 (No. 7 of 1999)**

The Bill seeks to amend the Kenya Roads Board Act by reconstituting the Kenya Roads Board from its current 13 Members to 9 Members.

**50. The Controller of Budget Act, 2016 (No.26 of 2016)**

The Bill proposes to amend the Controller of Budget Act to require the presentation of the annual report within six months after the expiry of the year to which it relates.

**51. The Miscellaneous Fees and Levies Act, 2016 (No.29 of 2016)**

The Bill proposes to amend the Miscellaneous Fees and Levies Act to include “levies” together with “fees”.



**52. The Water Act, 2016 (No. 43 of 2016)**

The Bill proposes to amend the Water Act to include the Attorney-General as a member of the Water Resources Management Board. It also proposes to amend the Act to require the appointments of chief executive officers under the Act to be in line with the Guidelines made by the Salaries and Remuneration Commission. It also proposes to amend the Act to allow designation of representatives to sit in the boards in place of designated officer holders. Additionally, it proposes to amend the Act to introduce new members to the Water Works Development Agencies, the Water Services Regulatory Board and the Board of Trustees.

**53. The Bribery Act, 2016 (No. 47 of 2016)**

The Bill proposes to amend the Bribery Act to include both private and public entities in the scope of the application of the Act and to make other minor amendments.

**54. The Public Service Commission Act, 2017 (No.17 of 2017)**

The Bill proposes to amend the Public Service Commission Act to require the presentation of the Commissions Annual report be done within six months after the expiry of the year to which it relates.

**55. The Scrap Metal Act, 2015 (No. 1 of 2015)**

The Bill proposes to amend the Scrap Metal Act to provide for a special licence for dealing in copper, aluminium and their alloys. This is intended to protect critical infrastructure for instance transformers. The Bill further proposes to restrict the disposal of scrap metal from critical infrastructure to two national entities namely the Numerical Machining Complex and the Kenya Shipyard Limited and the regulation of imports in addition to exports as well as the enhancement of several penalties in the Act to deter vandalism and other prohibited acts.

**56. The Energy Act, 2019 (No. 1 of 2019)**

The Bill proposes to amend the Energy Act, 2015 to give effect to the recommendations of the Presidential Taskforce on the Review of Power Purchase Agreements. The proposals include—

- (a) addressing the overlap in functions between the Energy Petroleum Regulatory Authority and the Ministry of Energy;
- (b) including the Kenya Power and Lighting Company in the Membership of the Rural Electrification and Renewable Energy Corporation established under the Act;



- (c) winding up the Nuclear Power and Energy Agency and transferring its functions to the Ministry; and
- (d) subjecting the making of regulations to the attainment by the grid of the quality and reliability of supply and service prescribed by the Energy and Petroleum Regulatory Authority to allow for compensation of consumers for power outages when the country achieves N-I Grid Reliability status.

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

The Bill does not delegate legislative power to the Cabinet Secretary to make regulations. The Bill does not limit any fundamental rights or freedoms.

**Statement on how the Bill concerns county governments**

The Bill does not concern county governments in terms of Article 110 (1) (a) of the Constitution.

**Statement of the Bill as a money Bill within the meaning of Article 114 of the Constitution**

The Bill is not a Money Bill within the meaning of Article 114 of the Constitution.

Dated the 28th April, 2022.

AMOS KIMUNYA,  
*Leader of the Majority Party.*



## **The Vexatious Proceedings Act (Cap. 41).**

*Section 4 which it is intended to amend—*

### **4. Restraint of criminal proceedings**

No criminal proceedings shall, except with the written consent of the Attorney-General, be instituted by a vexatious litigant in any court.

## **The Penal Code (Cap. 63)**

*Section 4 which it is intended to amend—*

### **146. Defilement of idiots or imbeciles**

Any person who, knowing a person to be an idiot or imbecile, has or attempts to have unlawful carnal connection with him or her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the person was an idiot or imbecile, is guilty of a felony and is liable to imprisonment with hard labour for fourteen years.

## **The Criminal Procedure Code (Cap. 75).**

*Section 2 which it is intended to amend—*

### **2. Interpretation**

“police officer” means a police officer or an administration police officer;

“police station” means a place designated by the Inspector-General as a police station under section 40 of the National Police Service Act, 2011.

“public prosecutor” means the Director of Public Prosecutions, a state counsel, a person appointed under section 85 or a person acting under the direction of the Director of Public Prosecutions;

*Section 83 which it is intended to amend—*

### **83. Delegation of powers by Director of Public Prosecution**

The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by sections 81 and 82, and by Part VIII, be vested for the time being in the Solicitor-General, the Deputy Public Prosecutor, the Assistant Deputy Public Prosecutor or a state counsel, and the exercise of those powers by the Solicitor-General, the Deputy Public Prosecutor, the Assistant Deputy Public Prosecutor or a state counsel shall then operate as if they had been exercised by the Director of Public Prosecutions:



Provided that the Director of Public Prosecutions may in writing revoke an order made by him under this section.

*Section 90 which is intended to amend—*

#### **90. Issue of summons or warrant**

(3) A summons or warrant may be issued on a Sunday.

*Section 123 which it is intended to amend—*

#### **123. Bail in certain cases**

(1) When a person, other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, that person may be admitted to bail:

Provided that the officer or court may, instead of taking bail from the person, release him on his executing a bond without sureties for his appearance as provided hereafter in this Part.

*Section 131 which it is intended to amend—*

#### **131. Forfeiture of recognizance**

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover it by issuing a warrant for the attachment and sale of the movable property belonging to that person, or his estate if he is dead.

*Section 137O which it is intended to amend—*

#### **137O. Rules under this sub-Part**

The Attorney-General may make rules for the better carrying into effect the provisions of this Part and such rules shall apply *mutatis mutandis* to prosecutions conducted under section 88 of the Act.

*Section 184 which it is intended to amend—*

#### **184. Charge of rape**

Where a person is charged with rape and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections of the Sexual Offences Act, he may be convicted of that offence although he was not charged with it.

*Section 186 which it is intended to delete—*



## **186. Charge of defilement of a girl under 14 years of age**

When a person is charged with the defilement of a girl under the age of fourteen years and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under the Sexual Offences Act, he may be convicted of that offence although he was not charged with it.

## **The Extradition (Commonwealth Countries) Act (Cap. 77).**

*Section 7 which it is intended to amend—*

### **7. Authority to proceed**

(1) Subject to the provisions of this Act relating to provisional warrants, a fugitive shall not be dealt with in any manner under this Act except in pursuance of the written authority of the Attorney-General, issued in pursuance of a request made to the Attorney-General by or on behalf of the government of the designated Commonwealth country in which such person is accused or was convicted.

(2) There shall be furnished with any request—

- (a) in the case of a fugitive accused of an extradition offence, an overseas warrant issued in the requesting country;
- (b) in the case of a fugitive unlawfully at large after conviction of an extradition offence, a certificate of the conviction and sentence in the requesting country, and a statement of the amount (if any) of that sentence which has been served, together (in each case) with particulars of the fugitive concerned and of the facts upon which and the law under which he is accused or was convicted, and evidence sufficient to justify the issue of a warrant of arrest.

(3) On receiving a request, the Attorney-General may issue an authority to proceed, unless it appears to him that a warrant of surrender in that case could not lawfully be made, or would not in fact be made, under this Act.

*Section 8 which it is intended to amend—*

### **8. Arrest for purposes of committal**

(1) A warrant for the arrest of a fugitive may be issued by a magistrate—

- (a) on receipt of an authority to proceed; or
- (b) without an authority to proceed, upon information that the fugitive is or is believed to be in or on his way to Kenya.



(2) A warrant of arrest may be issued upon such evidence as would, in the opinion of the magistrate, authorize the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence, in Kenya.

(3) Where the warrant of arrest issued in respect of a fugitive is a provisional warrant—

- (a) the magistrate who issues it shall forthwith give notice to the Attorney-General, and transmit to him the information and evidence, or certified copies of the information and evidence, upon which the warrant was issued; and
- (b) the Attorney-General may in any case, and shall if he decides not to issue an authority to proceed, cancel the warrant, and discharge the fugitive from custody if he has been arrested under the warrant.

(4) Where a warrant of arrest is issued in respect of a fugitive accused of an offence of stealing or receiving stolen property or any other offence in respect of property, a magistrate shall have the like power to issue a warrant to search for the property as if the offence had been committed in Kenya.

(5) A warrant of arrest may be executed in any place in Kenya by any person to whom it is directed or by any police officer.

*Section 9 which it is intended to amend—*

## **9. Proceedings for committal**

(1) A person arrested in pursuance of a warrant of arrest shall (unless previously discharged under subsection (3) of section 8) be brought as soon as practicable before the Court.

(2) If a person is arrested in pursuance of this Act and brought before a magistrate who has no power to exercise jurisdiction under this Act, that magistrate shall have power to order that person to be brought before some magistrate having such jurisdiction, and to remand or admit that person to bail, and effect shall be given to any such order.

(3) For the purposes of proceedings under this section, the court shall have the like jurisdiction and powers, as nearly as may be, as it has in a trial.

(4) Where a fugitive arrested in pursuance of a provisional warrant is in custody and the court has not received an authority to proceed, it may fix a reasonable period (of which it shall give notice to the Attorney-



General) after which it will discharge the fugitive from custody if it has not received an authority to proceed.

(5) Where the court has received an authority to proceed in respect of a fugitive arrested, and it is satisfied, after hearing any evidence tendered in support of the request for the surrender or on behalf of the fugitive, that the offence to which the authority to proceed relates is an extradition offence, and if further satisfied—

- (a) where the fugitive is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if it had been committed in Kenya; or
- (b) where the fugitive is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large, the court shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his surrender, but if the court is not so satisfied, or if the committal is so prohibited, the court shall discharge him from custody.

(6) Any property in the possession of a fugitive committed to custody under this section at the time of his apprehension that may be material as evidence in proving the offence for which his surrender is requested shall, if the court so directs, be delivered up with him on his surrender.

*Section 10 which it is intended to amend—*

## **10. Application for habeas corpus, etc.**

(1) Where a fugitive is committed to custody under section 9, the court shall inform him of his right to make an application for *habeas corpus* and shall forthwith give notice of the committal to the Attorney-General.

(2) A fugitive shall not be surrendered—

- (a) in any case, until after the end of fifteen days beginning with the day on which the order for his committal to custody was made;
- (b) if an application for *habeas corpus* is made in his case, so long as proceedings on that application are pending.

(3) On an application for *habeas corpus*, the High Court may, without prejudice to any other jurisdiction vested in it, order the fugitive to be discharge from custody if it appears to the High Court that—

- (a) by reason of the trivial nature of the offence of which he is accused or was convicted; or



- (b) by reason of the passage of time since he is alleged to have committed the offence or to have become unlawfully at large, as the case may be; or
- (c) because the accusation against him is not made in good faith in the interests of justice, it would, having regard to all the circumstances, be unjust or oppressive to surrender him.

(4) On an application for *habeas corpus*, the High Court may receive additional evidence relevant to the exercise of its jurisdiction under section 6 or under subsection (3).

### **The Evidence Act (Cap. 80).**

*Section 78 which it is intended to amend—*

#### **78. Photographic evidence—admissibility of certificate**

(1) In criminal proceedings a certificate in the form in the First Schedule to this Act, given under the hand of an officer appointed by order of the Director of Public Prosecutions for the purpose, who shall have prepared a photographic print or a photographic enlargement from exposed film submitted to him, shall be admissible, together with any photographic prints, photographic enlargements and any other annex referred to therein, and shall be evidence of all facts stated therein.

*Section 125 which it is intended to amend—*

#### **125. Competency generally**

(2) A mentally disordered person or a lunatic is not incompetent to testify unless he is prevented by his condition from understanding the questions put to him and giving rational answers to them.

### **The National Flag, Emblems and Names Act (Cap. 99).**

*Section 6 which it is intended to amend—*

#### **6. Sanction for prosecution**

No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction in writing of the Attorney-General.

### **The Official Secrets Act (Cap. 187).**

*Section 10 which it is intended to amend—*

#### **10. Consent to prosecution**

(1) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.



**The Geneva Conventions Act (Cap. 198).**

*Section 3 which it is intended to amend—*

**3. Grave breach of Convention**

(3) A prosecution for an offence under this section shall not be instituted except by or on behalf of the Attorney-General.

**40. Offences and penalties in respect of advertisements**

**The Mental Health Act (Cap. 248).**

*Section 42 which it is intended to amend—*

**42. Protection of persons acting under Act**

(5) No criminal proceedings shall be commenced under this Act without the prior consent in writing of the Attorney-General.

**The Land Consolidation Act (Cap. 283).**

*Section 14 which it is intended to amend—*

(5) Neither a Committee nor an Arbitration Board shall be disqualified for the transaction of business by reason of any vacancy amongst the members thereof; and any proceedings therein shall be valid, notwithstanding that some person, who was not entitled to do so, took part in the proceedings.

- (a) If any person fails to comply with the provisions of subsection (1) of this section, he shall be guilty of an offence and liable to imprisonment for a term not exceeding six months.
- (b) A prosecution for an offence under this section shall not be instituted except with the consent of the Attorney-General.

**The Land Adjudication Act (Cap. 284).**

*Section 33 which it is intended to amend—*

**33. Offences**

Any person who—

- (a) after receiving a summons issued under this Act, without reasonable excuse neglects or refuses to attend in pursuance of it or to produce any map, plan, instrument or other document which he is required by it to produce; or
- (b) without reasonable excuse neglects or refuses to answer upon oath or otherwise, or knowingly gives an untrue answer to, a



question lawfully put to him by an officer, committee or board under this Act; or

- (c) without reasonable excuse neglects or refuses to demarcate his land, or to assist in the demarcation of his land, or to clear or assist in the clearing of any boundary or other line, when required to do so by a demarcation officer; or
- (d) without reasonable excuse, interferes with any demarcated boundary, or defaces, removes, injures or otherwise impairs any feature of a demarcated boundary, or allows any demarcated boundary to fall into disrepair; or
- (e) contravenes section 8(1) of this Act, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment:

Provided that a prosecution for an offence under paragraph (e) of this section shall not be instituted except with the consent of the Attorney-General.

#### **The Marine Insurance Act (Cap. 390).**

*Section 91 which it is intended to amend—*

#### **91. Prohibition of gambling on loss by maritime perils**

(3) A person shall not be prosecuted under this section without the consent of the Attorney-General.

#### **The Local Manufactures (Export Compensation) Act (Cap. 482).**

*Section 10 which it is intended to amend—*

#### **10. Proceedings**

(2) Any officer, as defined in the Customs and Excise Act (Cap. 472), shall, subject to the control of the Attorney-General, have power to conduct a prosecution for an offence against this Act and for that purpose shall have all the powers of a public prosecutor appointed under the Criminal Procedure Code (Cap. 75).

#### **The Capital Markets Act (Cap. 485A).**

*Section 38 which it is intended to amend—*

#### **38. Prosecution of offences**

The Attorney-General may, on the request of the Authority, appoint any officer of the Authority or advocate of the High Court to be a public prosecutor for the purposes of offences under the provisions of this Act.



## **The Architects and Quantity Surveyors Act (Cap. 525).**

*Section 3 which it is intended to amend—*

### **3. Restriction on use of titles**

(3) Without prejudice to the powers of the Attorney-General, proceedings for an offence under this section may be instituted by any person who is authorized in that behalf, whether generally or specially, by the Board in writing.

## **The Prevention of Fraud (Investments) Act (No. 1 of 1977).**

*Section 27 which it is intended to amend—*

### **27. General penalty and provisions as to offences**

(3) No proceedings for an offence under section 7 or section 17 of this Act shall be instituted except by or with the consent of the Attorney-General:

Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings has not been obtained.

## **The Higher Education Loans Board Act 1995, (No. 3 of 1995).**

*Section 27 which it is intended to amend—*

### **24. Powers of inspector to prosecute**

An inspector appointed under section 22 or any other person authorized by the Board in writing, may, subject to the general or special directions of the Attorney-General, prosecute in any court for all offences under this Act and for that purpose have all the powers conferred on a public prosecutor by the Criminal Procedure Code (Cap. 75).

## **The Retirement Benefits Act (No. 3 of 1997).**

*Section 54 which it is intended to amend—*

### **54A. Conduct of prosecutions**

(1) The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), appoint public prosecutors for the purposes of cases arising under this Act

## **The Co-operative Societies Act, 1997 (No. 12 of 1997).**

*Section 94 which it is intended to amend—*



## **94. Offences**

(3) The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), appoint public prosecutors for cases arising under the provisions of this Act.

## **The Environmental Management and Co-ordination Act (No. 8 of 1999)**

*Section 31 which it is intended to amend—*

### **31. National Environmental Complaints Committee**

(1) There is hereby established a committee of the Authority to be known as the Complaints Committee which shall consist of—

- (a) a Chairperson appointed by the Cabinet Secretary and who shall be a person qualified for appointment as a judge of the Environment and Land Court of Kenya;
- (b) a representative of the Attorney-General;
- (c) a representative of the Law Society of Kenya;
- (d) (d) one person who has demonstrated competence in environmental matters, nominated by the Council of County Governors and who shall be secretary to the Complaints Committee;
- (e) a representative of the business community appointed by the Cabinet Secretary;
- (f) two members appointed by the Cabinet Secretary for their active role in environmental management.

(2) The members of the Complaints Committee, other than the members appointed under subsection (1)(b), shall hold office for a period of three years but shall be eligible for reappointment:

Provided that no member shall hold office for more than two terms.

(3) A member of the Complaints Committee other than the member appointed under subsection (1)(b) may—

- (a) at anytime resign from office by notice in writing to the Cabinet Secretary through the chairperson;
- (b) be removed from office by the Cabinet Secretary if the member—
  - (i) has been absent from three consecutive meetings of the Committee without permission from the chairperson;



- (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
- (iii) is incapacitated by prolonged physical or mental illness; or
- (iv) is otherwise unable or unfit to discharge his functions.

(4) If a member of the Complaints Committee vacates office before the expiry of his term, the appointing authority shall appoint a suitable replacement therefor.

(5) Where a member of the Complaints Committee is unable to perform the functions of his office due to any temporary incapacity which may be prolonged, the appointing authority may appoint a substitute for the member until such time as the Cabinet Secretary determines the incapacity has ceased.

(6) Subject to this Act, the Complaints Committee shall regulate its own procedure.

*Section 32 which it is intended to amend—*

### **32. Functions of the Complaints Committee**

The functions of the Complaints Committee shall be—

- (a) to investigate—
  - (i) any allegations or complaints against any person or against the Authority in relation to the condition of the environment in Kenya;
  - (ii) on its own motion, any suspected case of environmental degradation, and to make a report of its findings together with its recommendations thereon to the Cabinet Secretary;
- (b) to prepare and submit to the Cabinet Secretary, periodic reports of its activities which report shall form part of the annual report on the state of the environment under section 9(3);
  - (bb) undertake public interest litigation on behalf of the citizens in environmental matters; and
- (c) to perform such other functions and exercise such powers as may be assigned to it by the Cabinet Secretary.

*Section 33 which it is intended to amend—*

### **33. Powers of the Complaints Committee**

(1) The Complaints Committee may, by notice in writing, require any person to—



- (a) give to the National Environmental Complaints Committee all reasonable assistance in connection with the investigation of any complaint under section 32; or
  - (b) appear before the National Environmental Complaints Committee for examination concerning matters relevant to the investigation of any complaint under section 32.
- (2) A person who—
- (a) refuses or fails to comply with the requirement of the National Environmental Complaints Committee which is applicable to him, to the extent to which he is able to comply with it; or
  - (b) obstructs or hinders the National Environmental Department in the exercise of his powers under this Act; or
  - (c) furnishes information or makes a statement to the National Environmental Complaints Committee which he knows to be false or misleading in any material particular; or
  - (d) when appearing before the National Environmental Complaints Committee for examination, makes a statement which he knows to be false or misleading in any material particular, commits an offence.

*Section 34 which it is intended to amend—*

#### **34. Proceedings of the Complaints Committee privileged**

No proceedings shall lie against the Chairperson or any member of the Complaints Committee in respect of anything done *bona fide* in the performance of the duties of the Complaints Committee under this Act.

*Section 35 which it is intended to amend—*

#### **35. Disclosure of interest**

(1) If a member of the Complaints Committee is directly or indirectly interested in any matter before the Complaints Committee and is present at a meeting of the Complaints Committee at which the matter is the subject of investigation, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions in respect of the matter, or be counted in the quorum of the meeting during the consideration of the matter.

*Section 36 which it is intended to amend—*



### **36. Remuneration and other expenses of the Complaints Committee**

(1) There shall be paid to the Chairperson and members of the Complaints Committee, such remuneration, fees or allowances for expenses as the Cabinet Secretary may determine.

(2) The remuneration fees or allowances referred to in subsection (1) together with any other expenses incurred by the Complaints Committee in the execution of its functions under this Act shall be paid out of monies provided by Parliament for that purpose.

### **The Central Depositories Act, 2000 (No. 4 of 2000).**

*Section 63 which it is intended to amend—*

### **63. Prosecution**

The Attorney-General may on the request of the Authority appoint any officer of the Authority or advocate of the High Court to be a prosecutor in respect of any offence under this Act.

### **The Copyright Act (No. 12 of 2001)**

*Section 2 which it is intended to amend—*

"collective management organisation" means an organisation approved and authorized by the Board which has as its main object, or one of its main objects, the negotiating for the collection and distribution of royalties and the granting of licenses in respect of the use of copyright works or related rights;

*Section 30B which it is intended to amend—*

### **30B. Collection and payment of royalty**

(1) Subject to the provisions of sections 28 and 30 of this Act, the Kenya Revenue Authority or any other designated entity by the Board shall collect royalties on behalf of collective management organizations licensed to represent performers and owners of sound recordings.

(2) All claims for compensation under this section shall be made through the collective management organizations representative of performers and producers of sound recordings.

(3) The level of the royalty payable shall be agreed between the collective management organization representative of performers and producers of sound recordings and the organization representative of manufacturers and importers of audio recording equipment, audio blank tape and media intended for recording or failing such agreement by the Board.



(4) The Board shall determine and, by notice in the Gazette, publish the share of the private copying remuneration applicable to the respective rights holders.

*Section 46 which it is intended to amend—*

#### **46. Collective administration of Copyright**

(1) No person or association of persons shall commence or carry on the business of a copyright collective management organisation except under or in accordance with a certificate of registration granted under this section.

(2) Applications for registration as collective management organisations shall be made to the Board accompanied with the prescribed fees and the Board, by a Gazette notice is empowered to declare a body which has applied for registration a collecting society, for all relevant copyright owners or for such classes of relevant copyright owners as are specified in the notice.

(3) Every certificate issued to a collective management organisation shall be in the prescribed form and shall unless cancelled be valid for a period of twelve months from the date of issue.

(3A) Where the collective management organization has not submitted a complete application or where administrative shortfalls are apparent, the Board may issue a provisional license for a period not exceeding six months and such provisional license shall be counted as part of the complete license if the license is subsequently issued.

(4) The Board may approve a collective management organisation if it is satisfied that—

- (a) the body is a company limited by guarantee and incorporated under the Companies Act, 2015;
- (b) it is a non-profit making entity;
- (c) its rules and regulations contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of members of the collecting society are adequately protected;
- (d) its principal objectives are the collection and distribution of royalties; and
- (e) its accounts are regularly audited by independent external auditors elected by the society.



(5) The Board shall not approve another collective management organisation in respect of the same class of rights and category of works if there exists another collective management organisation that has been licensed and functions to the satisfaction of its members.

(6) The Board may, where it finds it expedient, assist in establishing a collective management organisation for any class of copyright owners.

(7) Deleted by Act No. 20 of 2019, s. 30.

(8) Deleted by Act No. 20 of 2019, s. 30.

(9) The Board may by notice in the Gazette and two daily newspapers of national circulation de-register a collective management organisation if its satisfied that the collective management organisation—

- (a) is not functioning adequately as collective management organisation;
- (b) is not acting in accordance with its Memorandum and Articles of Association or in the best interests of its members;
- (c) has altered its rules so that it no longer complies with subsection 4 of this section; and
- (d) it has refused or failed to comply with any of the provisions of this Act.

(10) Before deregistering a collective management organization, the Board shall notify the organization in writing and invite it and any of its members to make written representations against deregistration within twenty one days from the date of the notice.

(11) If, after consideration of any written representations made in terms of subsection (10), the Board is of the opinion that the failure in question on the part of the organisation is materially prejudicing or has materially prejudiced its members, the Board may withdraw the registration thereof or otherwise sanction members of the Board of Directors or Management of the organization as set out under this Act.

(12) Any person who purports to collect royalties from users as provided for under this section without authority of the Board commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment to a term not exceeding four years, or both.

*Section 46A which it is intended to amend—*

#### **46A. Approval for imposition and collection of levy**

Notwithstanding any other provision of this Act, no collecting society shall—



- (a) impose or collect royalty based on a tariff that has not been approved and published in the Gazette by the Cabinet Secretary in charge of copyright issues in the Gazette from time to time; or
- (b) levy royalty on users exempted by the Cabinet Secretary by notice in the Gazette.

*Section 46B which it is intended to amend—*

**46B. Qualification and tenure of Directors and Chairpersons of collective management organizations**

(1) A member of a collective management organization shall be eligible for election as a director if he holds a postsecondary qualification recognized in Kenya.

(2) A director elected under this section shall serve for a term of three years and shall be eligible for re-election for one further term.

(3) A director elected as a chairperson of a collective management organization shall hold office for a term of three years and shall be eligible for re-election for one further term.

(4) A chief executive officer of a collective management organization shall hold office for a term of four years and shall be eligible for reappointment for one further term upon satisfactory performance as evaluated by the directors.

*Section 46C which it is intended to amend—*

**46C. Role and types of collective management organizations**

(1) Authors, producers, performers, visual artists and publishers may form a collective management organization to collect, manage and distribute royalties and other remuneration accruing to their members.

(2) Any new collective management organization to deal with rights not provided for under subsection (1) may be approved by the Kenya Copyright Board as may be necessary.

(3) The designated extent of operation shall be set by Regulations made under this Act.

*Section 46E which it is intended to amend—*

**46E. Inspection and control of collective management organisations**

(6) The powers conferred by subsection (1) may be exercised in the following circumstances—



- (a) where a petition for inspection has been made by not less than forty five percent of the membership specifying breach of instruments establishing the entity, the regulations or the Act;
- (b) failure by a collective management organization to account for monies to at least twenty percent of its members;
- (c) failure by a collective management organization to offer an account of the exploitation of the copyright works assigned or licensed to it;
- (d) where a collective management organization has acted beyond its powers in administering the rights to which it is assigned or licensed;
- (e) where a collective management organization has altered its memorandum or other internal rules to exclude a section of its members in participating in its affairs or as to alter its core business;
- (f) where a collective management organization has persistently failed to adhere to its set administrative budget without a reasonable cause; or
- (g) where a collective management organisation has failed to comply with a request for information or records from its members or the Board

**The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003).**

*Section 25A which it is intended to amend—*

**25A. Cessation of investigations**

(1) The Commission may, in consultation with the Minister and the Attorney-General, tender an undertaking in a form prescribed by the Minister, not to institute or continue with investigations against any person suspected of an offence under this Act.

*Section 37 which it is intended to amend—*

**37. Annual report on prosecutions**

(6) The Attorney-General shall lay each annual report before the National Assembly within the first ten sitting days of the National Assembly following the end of the year to which the report relates.

*Section 62 which it is intended to amend—*

**62. Suspension, if charged with corruption or economic crime**



(5) The following shall apply with respect to a charge in proceedings instituted otherwise than by or under the direction of the Attorney-General—

- (a) this section does not apply to the charge unless permission is given by the court or the Attorney-General to prosecute or the proceedings are taken over by the Attorney-General; and
- (b) if permission is given or the proceedings are taken over, the date of the charge shall be deemed, for the purposes of this section, to be the date when the permission is given or the proceedings are taken over.

(6) This section does not apply with respect to an office if the Constitution limits or provides for the grounds upon which a holder of the office may be removed or the circumstances in which the office must be vacated.

#### **The Sexual Offences Act, 2006 (No. 3 of 2006).**

*Section 40 which it is intended to amend—*

#### **40. Attorney-General to decide whether police investigations should be discontinued**

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

#### **The National Museums and Heritage Act, 2006 (No. 6 of 2006).**

*Section 57 which it is intended to amend—*

#### **57. Heritage wardens**

(2) A heritage warden appointed under subsection (1) may, with leave of the Attorney-General be appointed prosecutor for purposes of prosecuting offences committed under this Act.

#### **The Labour Institutions Act, 2007 (No. 12 of 2007).**

*Section 35 which it is intended to amend—*

#### **35. Powers of labour officer**

- (1) A labour officer may, for the purpose of monitoring or enforcing compliance with any labour law—
- (k) without prejudice to the powers of the Attorney-General, institute proceedings in respect of any contravention of any provision of this Act or for any offence committed by an employer under this Act or any other labour law;



**The Accountants Act, 2008 (No.15 of 2008).**

*Section 43 which it is intended to amend—*

**43. Conduct of prosecutions**

The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), appoint public prosecutors for purposes of this Act.

**The International Crimes Act, 2008 (No. 16 of 2008).**

*Section 5 which it is intended to amend—*

**5. Obligations imposed by Rome Statute or ICC Rules**

For the purposes of any provision of the Rome Statute or the ICC Rules that confers or imposes a power, duty or function on a State, that power, duty or function may be exercised or carried out on behalf of the Government of Kenya by the Attorney-General, if this Act makes no other provision in that behalf.

*Section 19 which it is intended to amend—*

**19. Co-operation as regards offences against administration of justice**

(2) In addition to the grounds of refusal or postponement specified in Parts IV and V, a request for surrender or other assistance that relates to an offence involving the administration of justice may be refused if, in the opinion of the Minister or the Attorney-General, as the case may be, there are exceptional circumstances that would make it unjust or oppressive to surrender the person or give the assistance requested.

(3) Where, pursuant to subsection (2), the Minister or the Attorney-General is of the opinion that there are exceptional circumstances that would make it unjust or oppressive to surrender the person or give the assistance requested, the Minister or the Attorney-General, as the case may be, shall give the reasons underlying his opinion.

*Section 21 which it is intended to amend—*

**21. Requests to be made through authorised channel**

(1) A request for assistance shall be made through an authorised channel and—

(b) in any other case, be transmitted to the Attorney-General or a person authorised by the Attorney-General to receive requests.

*Section 23 which it is intended to amend—*

**23. Execution of requests**

(2) If the request for assistance specifies that it should be executed in a particular manner that is not prohibited by Kenyan law or by using a



particular procedure that is not prohibited by Kenyan law, the Attorney-General or the Minister, as the case may be, shall use his best endeavours to ensure that the request is executed in that manner or using that procedure, as the case may require.

*Section 24 which it is intended to amend—*

## **24. Consultation**

(1) The Attorney-General or the Minister, as the case may be, shall consult with the ICC without delay if—

- (a) a request for assistance is received from the ICC that does not contain or is not accompanied by the appropriate information or the appropriate documents specified in articles 87, 91, 92, 93, or 96 of the Rome Statute;
- (b) the ICC has not provided sufficient information for a request for assistance to be executed;
- (c) in the case of a request for surrender—
  - (i) the person sought cannot be located in Kenya; or
  - (ii) it appears that the person in Kenya is clearly not the person named in the warrant or judgment, as the case may be;
- (d) execution of a request for assistance in its current form would require the breach of an existing treaty obligation to another State; or
- (e) for any other reason there are or may be difficulties with the execution of a request for assistance received from the ICC.

(2) Before refusing any request for assistance, the Attorney-General or the Minister, as the case may be, shall consult with the ICC to ascertain whether the assistance sought could be provided—

- (a) subject to conditions; or
- (b) at a later date or in an alternative manner.

(3) Without limiting the types of conditions under which assistance may be provided, the Attorney-General may agree to the transmission of documents or information to the Prosecutor on a confidential basis, on the condition that the Prosecutor will use them solely for the purpose of generating new evidence.

(4) If the Attorney-General transmits documents or information subject to the condition specified in subsection (3), the Attorney-General may subsequently consent to the disclosure of such documents or



information for use as evidence under the provisions of Parts 5 and 6 of the Rome Statute and in accordance with the ICC Rules.

*Section 25 which it is intended to amend—*

**25. Confidentiality of request**

- (3) In this section, “Kenyan authorities” means—
- (a) the Attorney-General;
  - (b) the Minister;
  - (c) every member of the police force;
  - (d) every prison officer; and
  - (e) every employee of or contractor engaged by a Kenyan agency that is authorised to deal with the request.

*Section 26 which it is intended to amend—*

**26. Response to be sent to ICC**

(1) The Attorney-General or the Minister, as the case may be, shall notify the ICC, without delay, of his response to a request for assistance and of the outcome of any action that has been taken in relation to it.

(2) If the Attorney-General or the Minister decides, in accordance with the Rome Statute and this Act, to refuse or postpone the assistance requested, in whole or in part, the notice to the ICC shall set out the reasons for the decision.

*Section 76 which it is intended to amend—*

**76. Assistance in locating or identifying persons or things**

(1) Where the ICC requests assistance under paragraph 8 of article 19, article 56, article 64 or paragraph 1(a) of article 93 of the Rome Statute in locating, or identifying and locating, a person or a thing believed to be in Kenya, the Attorney-General shall give authority for the request to proceed if he is satisfied that—

- (a) the request relates to an investigation being conducted by the Prosecutor or any proceedings before the ICC; and
- (b) the person to whom or thing to which the request relates is or may be in Kenya.

(2) If the Attorney-General gives authority for the request to proceed—



- (a) the Attorney-General shall forward the request to the appropriate Kenyan agency; and
- (b) that agency shall, without delay—
  - (i) use its best endeavours to locate or, as the case may be, identify and locate the person to whom or thing to which the request relates; and
  - (ii) advise the Attorney-General of the outcome of those endeavours.

*Section 77 which it is intended to amend—*

#### **77. Assistance in gathering evidence**

(2) The Attorney-General shall give authority for the request to proceed if the Attorney-General is satisfied that—

- (a) the request relates to an investigation being conducted by the Prosecutor or to any proceedings before the ICC; and
- (b) there are reasonable grounds for believing that the evidence can be taken or, as the case may be, the documents or other articles can be produced in Kenya.

*Section 78 which it is intended to amend—*

#### **78. Taking evidence**

(1) If the Attorney-General gives authority for a request relating to the taking of evidence to proceed, the statement of each witness shall be taken in writing on the oath or affirmation of that witness by a Judge of the High Court.

(2) The Judge who takes evidence under subsection (1) shall—

- (a) certify that the evidence was taken by the Judge; and
- (b) ensure that the evidence, as certified, is sent to the Attorney-General.

*Section 84 which it is intended to amend—*

#### **84. Assistance in questioning persons**

(1) Where the ICC requests assistance under paragraph 8 of article 19, article 56, article 64 or paragraph 1(c) of article 93 of the Rome Statute in questioning a person who is being investigated or prosecuted, the Attorney-General may give authority for the request to proceed if he is satisfied that—



- (a) the request relates to an investigation being conducted by the Prosecutor or any proceedings before the ICC; and
  - (b) the person is or may be in Kenya.
- (2) If the Attorney-General gives authority to proceed—
- (a) he shall forward the request to the appropriate Kenyan agency; and
  - (b) that agency shall, without delay—
    - (i) use its best endeavours to undertake the questioning that the ICC has requested;
    - (ii) ensure that the answers to the questions put are recorded in writing and make any other report on the questioning as it considers to be appropriate in the circumstances; and
    - (iii) advise the Attorney-General of the outcome of those endeavours and, if relevant, deliver to him the record and any report of the questioning.

*Section 85 which it is intended to amend—*

#### **85. Procedure where questioning by Kenyan agency**

(4) If the person seeks to have legal assistance assigned under subsection (2) (e)(ii), the Attorney-General shall cause such assistance to be provided.

*Section 86 which it is intended to amend—*

#### **86. Assistance in arranging service of documents**

(1) Where the ICC requests assistance under paragraph 8 of article 19, article 56, paragraph 7 of article 58, article 64 or paragraph 1(d) of article 93 of the Rome Statute in arranging for the service of a document in Kenya, the Attorney-General shall give authority for the request to proceed if he is satisfied that—

- (a) the request relates to an investigation being conducted by the Prosecutor or any proceedings before the ICC; and
- (b) the person or body to be served is or may be in Kenya.

(2) If the Attorney-General gives authority for the request to proceed, he shall forward the request for service to the appropriate Kenyan agency, and that agency shall, without delay—

- (a) use its best endeavours to have the process served—
  - (i) in accordance with any procedure specified in the request; or



- (ii) if that procedure would be unlawful or inappropriate in Kenya, or if no procedure is specified, in accordance with the law of Kenya; and
- (b) transmit to the Attorney-General—
  - (i) a certificate as to service, if the document is served; or
  - (ii) a statement of the reasons that prevented service, if the document is not served.
- (3) In this section, “document” includes—
  - (a) a summons requiring a person to appear as a witness; and
  - (b) a summons to an accused that has been issued under paragraph 7 of article 58 of the Rome Statute.

*Section 87 which it is intended to amend—*

### **87. Request for voluntary appearance of witness**

(1) Where the ICC requests assistance under paragraph 8 of article 19, article 56, paragraph 7 of article 58, article 64 or paragraph 1(e) of article 93 of the Rome Statute in facilitating the voluntary appearance of a witness before the ICC, the Attorney-General may give authority for the request to proceed if he is satisfied that—

- (a) the request relates to an investigation being conducted by the Prosecutor or any proceedings before the ICC; and
- (b) the witness’s attendance is sought so that the witness can give evidence or information relating to the investigation or proceedings; and
- (c) the witness is or may be in Kenya.

*Section 88 which it is intended to amend—*

### **88. Consent required and assurances may be sought**

(1) If the Attorney-General gives authority for the request to facilitate the voluntary appearance of a witness to proceed, he shall forward the request to the appropriate Kenyan agency.

(2) The Kenyan agency to which a request is forwarded under subsection (1) shall make such inquiries as may be necessary to ascertain if the prospective witness consents to giving evidence or assisting the ICC.

(3) The Attorney-General may, at any time, ask the ICC to give one or more of the following assurances—



- (a) that the witness will not be prosecuted, detained, or subjected to any restriction of personal freedom by the ICC in respect of all or any specified acts or omissions that occurred before the person's departure from Kenya;
- (b) that the witness will be returned to Kenya as soon as practicable in accordance with arrangements agreed to by the Attorney-General;
- (c) an assurance relating to such other matters as the Attorney-General thinks appropriate.

*Section 89 which it is intended to amend—*

**89. Attorney-General may facilitate appearance**

(1) The Attorney-General shall assist in the making of arrangements to facilitate a witness's attendance before the ICC if he is satisfied that—

- (a) the prospective witness has consented to giving the evidence or assistance requested; and
- (b) the ICC has given adequate assurances where appropriate.

(2) The Attorney-General shall—

- (a) approve and arrange the travel of the witness to the ICC;
- (b) obtain such approvals, authorities, and permissions as are required for that purpose, including, in the case of a person who although not liable to be detained in a prison is subject to a sentence—
  - (i) the variation, discharge, or suspension of the conditions of the person's release from prison; or
  - (ii) the variation or suspension of the person's sentence, or of the conditions of the person's sentence; and
- (c) take such other action for the purposes of subsection (1) as he thinks appropriate.

*Section 90 which it is intended to amend—*

**90. Request for temporary transfer of prisoner**

Where the ICC requests assistance under paragraph 1(f) of article 93 of the Rome Statute in facilitating the temporary transfer to the ICC of a Kenyan prisoner, the Attorney-General shall give authority for the request to proceed if he is satisfied that—



- (a) the request relates to an investigation being conducted by the Prosecutor or any proceedings before the ICC; and
- (b) the prisoner's attendance is sought for the purposes of identification or for obtaining evidence or other assistance.

*Section 91 which it is intended to amend—*

**91. Consent required and assurances may be sought**

(1) If the Attorney-General gives authority for the request to facilitate the temporary transfer of a Kenyan prisoner to proceed, he shall forward the request to the appropriate Kenyan agency.

(2) The Kenyan agency to which a request is forwarded under subsection (1) shall make such inquiries as may be necessary to ascertain if the prisoner will consent to the transfer.

(3) The Attorney-General may ask the ICC to give one or more of the following assurances—

- (a) that the prisoner will not be released from custody without the prior approval of the Attorney-General;
- (b) that the prisoner will be returned to Kenya without delay in accordance with arrangements agreed to by the Attorney-General;
- (c) assurances relating to such other matters as he thinks appropriate.

*Section 92 which it is intended to amend—*

**92. Attorney-General may arrange for transfer**

(1) The Attorney-General may authorise the temporary transfer of a Kenyan prisoner to the ICC if he is satisfied that—

- (a) the prisoner has consented to giving the evidence or assistance requested; and
- (b) the ICC has given adequate assurances where appropriate.

(2) If the Attorney-General authorises the temporary transfer of the prisoner to the ICC, he may—

- (a) direct that the prisoner be released from the prison in which that person is detained, for the purpose of the transfer to the ICC; and
- (b) make arrangements for the prisoner to travel to the ICC in the custody of—
  - (i) a member of the police force;
  - (ii) a prison officer; or



(iii) a person authorised for the purpose by the ICC.

(3) A direction given by the Attorney-General under subsection (2) in respect of a prisoner is sufficient authority for the release of the prisoner from the prison in which the prisoner is detained, for the purposes of the direction.

(4) Every person released under a direction given under subsection (2) is to be treated, for the purposes of sections 122, 123 and 124 of the Penal Code (Cap.63), (which relate to rescue or escape from lawful custody), as continuing to be in lawful custody while in Kenya during the period of that release.

*Section 93 which it is intended to amend—*

### **93. Effect of transfer on prisoner's sentence**

(2) If a prisoner who is serving a sentence for a Kenyan offence is transferred to the ICC under section 92—

- (a) the prisoner is to be treated, while in custody outside Kenya in connection with the request, as being in custody for the purposes of the Kenyan sentence, which shall continue to run; and
- (b) the Attorney-General—
  - (i) may at any time notify the ICC that the prisoner is no longer required to be kept in custody; and
  - (ii) shall notify the ICC if the prisoner is no longer liable to be detained in a Kenyan prison.

*Section 94 which it is intended to amend—*

### **94. Request for information about time spent in custody overseas**

(1) If a prisoner who is charged with or convicted of an offence against the law of Kenya (in this section referred to as “the Kenyan offence”) is transferred to the ICC under section 92 before sentence is imposed for the Kenyan offence, the Attorney-General may—

- (a) advise the ICC of the date on which the prisoner was sentenced for the Kenyan offence; and
- (b) request the ICC to provide a certificate recording the total period during which the prisoner was detained outside Kenya in connection with the request until sentence was imposed for the Kenyan offence.

(2) A certificate obtained under subsection (1) shall be presumed to be accurate in the absence of any evidence to the contrary.



(3) The Attorney-General may issue a certificate setting out the date and period specified in subsection (1) if—

- (a) the ICC does not provide a certificate within a reasonable time after the Attorney-General makes a request under subsection (1); and
- (b) the Attorney-General is satisfied on such information that he has that an accurate calculation can be made of the period referred to in paragraph (b) of subsection (1).

*Section 95 which it is intended to amend—*

### **95. Assistance in examining places or sites**

(1) Where the ICC requests assistance under paragraph 8 of article 19, article 56, article 64 or paragraph 1(g) of article 93 of the Rome Statute in examining places or sites in Kenya, the Attorney-General shall give authority for the request to proceed if he is satisfied that the request relates to an investigation being conducted by the Prosecutor or any proceedings before the ICC.

(2) If the Attorney-General gives authority for the request to proceed—

- (a) he shall forward the request to the appropriate Kenyan agency; and
- (b) that agency shall, without delay—
  - (i) use its best endeavours to undertake the examination of the place or site in the manner that the ICC has requested;
  - (ii) make such report on the examination as it considers to be appropriate in the circumstances; and
  - (iii) deliver the report of the examination to the Attorney-General.

(3) This section does not confer on any person a power to enter a place or site

*Section 96 which it is intended to amend—*

### **96. Request for search and seizure**

(1) Where the ICC makes a request under paragraph 8 of article 19, article 56, article 64 or paragraph 1(h) of article 93 of the Rome Statute for search and seizure, the Attorney-General shall give authority for the request to proceed if he is satisfied that—



- (a) the request relates to an investigation being conducted by the Prosecutor or any proceedings before the ICC; and
- (b) any thing relevant to the investigation or proceedings is or may be located in Kenya.

(2) If the Attorney-General gives authority for the request to proceed, he may authorise a member of the police force, in writing, to apply to a Judge of the High Court for a search warrant under section 97.

*Section 102 which it is intended to amend—*

### **102. Notice of execution of warrant**

(1) Every member of the police force who executes a warrant issued under section 97 shall, not later than seven days after the seizure of any thing under that warrant, give to the owner or occupier of the place or thing searched, and to every other person whom the member of the police force has reason to believe may have an interest in the thing seized, a written notice specifying—

- (a) the date and time of the execution of the warrant;
- (b) the identity of the person who executed the warrant; and
- (c) the thing seized under the warrant.

(2) If the warrant is executed, a report on the execution of the warrant, together with a copy of any notice given under subsection (1) shall be sent to the Attorney-General, without delay.

(3) If the warrant is not able to be executed, a report explaining the reasons for this shall be sent to the Attorney-General without delay.

*Section 103 which it is intended to amend—*

### **103. Disposal of things seized**

(1) If a member of the police force seizes a thing under a warrant issued under section 97, it shall be delivered into the custody and control of—

- (a) the Commissioner of Police; or
- (b) a commissioned officer of police designated by the Commissioner to receive things seized under this Act.

(2) The Commissioner of Police or designated officer shall—

- (a) inform the Attorney-General, without delay, that the thing has been so delivered;



- (b) retain the thing for a period not exceeding three months from the day on which the thing was seized, pending the Attorney-General's direction under subsection (3) about how to deal with it; and
  - (c) comply with any direction that the Attorney-General gives him.
- (3) The Attorney-General may, by written notice, give the Commissioner of Police or the designated officer a direction—
- (a) requiring the Commissioner or designated officer to send the thing to the ICC; or
  - (b) requiring the Commissioner or designated officer to deal with it in some other way.
- (4) The Attorney-General shall direct the Commissioner of Police or the designated officer to return the thing seized to the person from whose possession it was seized as soon as practicable, if—
- (a) the ICC advises that the thing is not required for the Prosecutor's investigation or its proceedings; or
  - (b) no other direction is given by the Attorney-General before the expiry of three months from the day on which the thing was seized.
- (5) Notwithstanding subsection (4), the Attorney-General may refuse to return the thing to the person from whom it was seized if—
- (a) the thing is the subject of a dispute as to who is entitled to it;
  - (b) the thing is required for the investigation of an offence within the jurisdiction of Kenya; or
  - (c) possession of the thing by the person would be unlawful in Kenya.

*Section 104 which it is intended to amend—*

#### **104. Facilitating provision of records and documents**

(1) Where the ICC makes a request under paragraph 1(i) of article 93 of the Rome Statute for the provision of records and documents, including official records and documents, the Attorney-General shall give authority for the request to proceed if he is satisfied that—

- (a) the request relates to an investigation being conducted by the Prosecutor or any proceedings before the ICC; and
- (b) the document or record sought is or may be in Kenya.



(2) If the Attorney-General gives authority for the request to proceed—

- (a) he shall forward the request to the appropriate Kenyan agency; and
- (b) that agency shall, without delay—
  - (i) use its best endeavours to locate and make available the document or record sought;
  - (ii) make such report on its endeavours as it considers to be appropriate in the circumstances; and
  - (iii) deliver the document or record, if located, to the Attorney-General.

(3) This section does not confer on any person power to require the production of a document or record.

*Section 105 which it is intended to amend—*

**105. Protecting victims and witnesses and preserving evidence**

(1) This section shall apply if the ICC requests—

- (a) assistance under paragraph 1(j) of article 93 of the Rome Statute in protecting victims and witnesses or preserving evidence; or
- (b) assistance under paragraph 8 of article 19, or paragraphs 2 or 3 of article 56, in preserving evidence.

(2) The Attorney-General shall give authority for the request to proceed if he is satisfied that—

- (a) the request relates to an investigation being conducted by the Prosecutor or any proceedings before the ICC; and
- (b) the assistance sought is not prohibited by Kenyan law.

(3) If the Attorney-General gives authority for the request to proceed—

- (a) he shall—
  - (i) take such steps as he thinks appropriate in the particular case; and
  - (ii) forward the request to the appropriate Kenyan agency; and
- (b) that agency shall, without delay—
  - (i) use its best endeavours to give effect to the request;



- (ii) make such report on its endeavours as it considers to be appropriate in the circumstances; and
- (iii) deliver the report to the Attorney-General.

*Section 106 which it is intended to amend—*

#### **106. Request relating to property associated with crime**

Where the ICC requests assistance under paragraph 1(k) of article 93 of the Rome Statute in identifying, tracing and freezing, or seizing, any property for the request to proceed if he is satisfied that—

- (a) the request relates to an international crime that is being investigated by the Prosecutor, or which is the subject of proceedings before the ICC; and
- (b) the property concerned is or may be located in Kenya.

*Section 107 which it is intended to amend—*

#### **107. Attorney-General may authorise measures**

If the Attorney-General gives authority for the request for assistance in identifying, tracing and freezing, or seizing, property to proceed, he may authorize the appropriate Kenyan authority to apply for one or more of the following orders or warrants—

- (a) a search warrant in respect of property under Part B of the Second Schedule;
- (b) a restraining order under Part C of the Second Schedule;
- (c) a production order under Part D of the Second Schedule;
- (d) a monitoring order under Part E of the Second Schedule.

*Section 108 which it is intended to amend—*

#### **108. Request for other types of assistance**

(1) Where the ICC requests any other type of assistance under paragraph 1(l) of article 93 of the Rome Statute for the purposes of facilitating the investigation and prosecution of crimes within the jurisdiction of the ICC, the Attorney-General shall give authority for the request to proceed if he is satisfied that—

- (a) the request relates to an investigation being conducted by the Prosecutor or any proceedings before the ICC; and
- (b) the assistance sought is in accordance with Kenyan law.



(2) If the Attorney-General gives authority for the request to proceed—

(a) he shall—

(i) take such steps as the Attorney-General thinks appropriate in the particular case; and

(ii) forward the request to the appropriate Kenyan agency; and

(b) that agency shall, without delay—

(i) use its best endeavours to give effect to the request;

(ii) make such report on its endeavours as it considers to be appropriate in the circumstances; and

(iii) deliver the report to the Attorney-General.

(3) If the Attorney-General considers that the assistance sought cannot lawfully be provided, he shall, before refusing the request, and in accordance with paragraph 5 of article 93 of the Rome Statute—

(a) consult with the ICC; and

(b) consider whether the assistance can be provided subject to conditions or whether it can be provided at a later date or in an alternative manner.

*Section 109 which it is intended to amend—*

### **109. Refusal of assistance**

(1) The Attorney-General shall refuse a request by the ICC for assistance to which this Part applies if—

(a) the ICC does not accept the conditions suggested in order to implement the request as contemplated by paragraph 5 of article 93 of the Rome Statute and section 108(3);

(b) the ICC determines under article 18 or article 19 of the Rome Statute that the case to which the request relates is inadmissible and section 113(4) applies; or

(c) section 115(4) applies.

(2) The Attorney-General may refuse a request by the ICC to which this Part applies if—

(a) Part VIII (which relates to the protection of national security or third party information) applies;



- (b) there are competing requests from the ICC and a State that is not a party to the Rome Statute relating to the same conduct and section 59(4)(as applied by section 114) applies; or
- (c) there are competing requests from the ICC and a State that is not a party to the Rome Statute relating to different conduct and section 60(3)(as applied by section 114) applies.

*Section 110 which it is intended to amend—*

#### **110. Postponement of execution of assistance**

(1) The Attorney-General may postpone the execution of a request for assistance under this Part if, and only if—

- (a) the execution of the request would interfere with an ongoing investigation or prosecution for a different offence and section 112 applies;
- (b) a ruling on admissibility is pending before the ICC and section 113 applies;
- (c) there are competing requests from the ICC and from another State to which Kenya is under an international obligation and section 114(2) (a) applies;
- (d) the request is for assistance under paragraph 1(l) of article 93 of the Rome Statute and is one to which section 108(3) applies; or
- (e) a request of the kind referred to in section 115(2)(c) is made to the ICC.

(2) Even if a case is one to which subsection (1) applies, the Attorney-General may decide not to postpone the execution of the request, and in that event the request shall be dealt with in accordance with this Part.

(3) If the Attorney-General postpones the execution of a request for assistance under this Part, the postponement may be for a reasonable time and may, if the Attorney-General considers it desirable, be extended from time to time.

*Section 111 which it is intended to amend—*

#### **111. Procedure if execution of assistance precluded under Kenyan law**

If the execution of a particular measure of assistance specified in a request to which this Part applies is prohibited in Kenya, then, notwithstanding any other provision in this Part, the Attorney-General shall—



(a) consider whether the assistance can be provided in another manner or subject to conditions; and

(b) promptly consult with the ICC in order to resolve the matter.

*Section 112 which it is intended to amend—*

### **112. Postponement where ongoing investigation or prosecution**

(1) If the immediate execution of a request by the ICC for assistance to which this Part applies would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the Attorney-General may postpone the execution of the request for a period of time agreed between him and the ICC.

(3) Before making a decision to postpone the execution of a request, the Attorney-General shall consider whether the assistance could be provided immediately subject to certain conditions.

(4) If the Attorney-General decides to postpone the execution of a request and the ICC seeks assistance in the preservation of evidence under paragraph 1(j) of article 93 of the Rome Statute, he shall deal with that request in accordance with this Part.

*Section 113 which it is intended to amend—*

### **113. Postponement where admissibility challenge**

(2) If the ICC has not made an order under article 18 or article 19 of the Rome Statute allowing the Prosecutor to collect evidence to which the request relates, the Attorney-General may postpone the execution of the request until the ICC's determination on admissibility is issued.

(3) If the ICC has made an order under article 18 or article 19 of the Rome Statute allowing the Prosecutor to collect evidence to which the request relates, the Attorney-General may not postpone the execution of a request under this section but shall deal with it under this Part.

*Section 114 which it is intended to amend—*

### **114. Competing requests**

(1) If the Attorney-General receives competing requests for assistance from the ICC and from another State to which Kenya is under an obligation to respond, he shall endeavour, after consultation with the ICC and the other State, to satisfy both requests.

(2) For the purposes of subsection (1), the Attorney-General may do either or both of the following—

(a) postpone the execution of either of the competing requests;



- (b) attach conditions to the provision of assistance under either or both of the requests.

*Section 115 which is intended to amend—*

### **115. Requests involving conflict with other international obligations**

(1) If a request by the ICC for assistance to which this Part applies concerns persons who, or information or property that, are subject to the control of another State or an international organisation under an international agreement, the Attorney-General shall inform the ICC to enable it to direct its request to the other State or international organisation.

(2) Where—

- (a) the ICC makes a request for assistance;
- (b) the ICC has not previously made a final determination on whether or not paragraph 1 of article 98 of the Rome Statute applies to that request; and
- (c) a request is made to the ICC to determine whether or not paragraph 1 of article 98 applies to the request for surrender, the Minister may postpone the request for assistance until the ICC advises whether or not it wishes to proceed with the request for assistance.

(3) If the ICC advises that it does not intend to proceed with the request, the request for assistance shall be refused.

(4) If the ICC advises that it intends to proceed with the request for assistance, and there is no other ground for refusing or postponing the request, the request shall continue to be dealt with under this Part.

*Section 116 which it is intended to amend—*

### **116. Effect of authority to proceed**

At any time before a formal response is sent to the ICC, the Attorney-General may decide that a request by the ICC for assistance to which this Part applies will be refused or the execution of the request postponed, on a ground specified in section 109 or 110, even if he has previously given authority for the request to proceed.

*Section 118 which it is intended to amend—*

### **118. Execution of request by Prosecutor**

(2) If the Attorney-General identifies difficulties with the execution of a request to which paragraph 4 (b) of article 99 of the Rome Statute



relates, he shall without delay consult with the ICC in order to resolve the matter.

*Section 119 which is intended to amend—*

**119. Assistance with enforcement of orders for victim reparation**

(1) This section shall apply if—

(a) the ICC—

(i) makes an order under article 75 of the Rome Statute requiring reparation; and

(ii) requests that the order be enforced in accordance with article 109 of the Rome Statute; and

(b) neither the conviction in respect of which the order was imposed nor the order requiring reparation is subject to further appeal.

(2) The Attorney-General shall give authority for the request to proceed if he is satisfied that the order—

(a) requires reparation; and

(b) is of a kind that can be enforced in the manner provided in this section.

(3) If the Attorney-General gives authority for the request to proceed—

(a) he shall refer the request to the appropriate Kenyan agency; and

(b) that agency shall, without delay—

(i) in a case where the order requires a monetary payment, take such steps as are necessary to enforce the order as if it were a judgment of the High Court in favour of the Republic in a civil matter for an amount equal to the amount of the monetary payment;

(ii) in a case where the order requires the restitution of assets, property or other tangible items, take such steps as are necessary to enforce the order as if it were a writ of restitution awarded in favour of the Republic under section 178 of the Criminal Procedure Code (Cap. 75); or

(iii) in a case where the order requires another remedy, take such steps as are necessary to enforce the order as if it were enforceable under the High Court Rules; and



- (c) that agency shall, without delay, make such report to the Attorney-General on the results of any action taken as it considers to be appropriate in the circumstances.

(4) Nothing in this section limits or affects the provision of other types of assistance to the ICC in relation to an order made under article 75 of the Rome Statute.

*Section 120 which it is intended to amend—*

**120. Enforcement of fines**

- (1) This section shall apply if—
  - (a) the ICC—
    - (i) orders payment of a fine under paragraph 2(a) of article 77 of the Rome Statute; and
    - (ii) requests that the order be enforced in accordance with article 109 of the Rome Statute; and
  - (b) neither the conviction in respect of which the order was imposed nor the order for payment of a fine is subject to further appeal.
- (2) The Attorney-General shall give authority for the request to proceed if he is satisfied that the order—
  - (a) involves a monetary penalty; and
  - (b) is of a kind that can be enforced in the manner provided in this section.
- (3) If the Attorney-General gives authority for the request to proceed—
  - (a) he shall refer the request to the appropriate Kenyan agency; and
  - (b) that agency shall, without delay—
    - (i) take such steps as are necessary to enforce the order as if it were a fine imposed on conviction under the Penal Code (Cap. 63); and
    - (ii) make such report to the Attorney-General on the results of any action taken as it considers to be appropriate in the circumstances.
- (4) Upon recovery the fine shall be disposed of in such manner as the ICC order may specify.



(5) Nothing in this section limits or affects the provision of other types of assistance to the ICC in relation to a penalty imposed under article 77 of the Rome Statute.

*Section 121 which it is intended to amend—*

### **121. Request for forfeiture of property**

Where—

- (a) the ICC makes an order under paragraph 2(b) of article 77 of the Rome Statute for the forfeiture of any property and requests assistance under paragraph 1 of article 109 of the Rome Statute to enforce the forfeiture order; and
- (b) neither the conviction in respect of which the order was imposed nor the forfeiture order is subject to further appeal, the Attorney-General may act on the request if he is satisfied that the order is of a kind that can be enforced in the manner provided in sections 122 to 126.

*Section 122 which it is intended to amend—*

### **122. Application for registration of forfeiture order**

(1) The Attorney-General may apply to the High Court for the registration of a forfeiture order or an amendment to such an order.

(2) On an application under subsection (1), the Court shall register the order or the amendment to the order under section 123 if it is satisfied that the order or amendment to the order is in force.

*Section 124 which it is intended to amend—*

### **124. Notice of registration of order**

If the High Court registers an order under section 123, the Court may direct the Attorney-General to do either or both of the following—

- (a) give notice of the registration, in the manner and within the time the Court considers appropriate, to such persons (other than a person convicted of an offence in respect of which the order was made) as the Court has reason to believe may have an interest in the property;
- (b) publish notice of the registration in the manner and within the time the Court considers appropriate.

*Section 126 which it is intended to amend—*

### **126. Forfeiture order may be treated as pecuniary penalty order**



(1) If the Attorney-General is unable to give effect to a forfeiture order, the Attorney-General shall take measures to recover—

- (a) the value specified by the ICC as the value of the property ordered by the ICC to be forfeited; or
- (b) if the ICC has not specified the value of the property, the value that, in the opinion of the Attorney-General, is the value of the property ordered by the ICC to be forfeited.

(2) In a case to which subsection (1) applies, the forfeiture order is to be treated as a fine ordered to be paid under the Penal Code (Cap. 63) for the equivalent amount and may be enforced accordingly as if it were a fine imposed on the date the forfeiture order was registered under this Act.

*Section 127 which it is intended to amend—*

### **127. Third parties may apply for relief**

(6) A person who makes an application under subsection (1) shall serve notice of the application on the Attorney-General, who shall be a party to any proceedings on the application.

*Section 129 which it is intended to amend—*

### **129. Cancellation of registration of order**

(1) If a forfeiture order has been registered under section 123, the Attorney-General may apply to the High Court for cancellation of the registration.

(2) Without limiting the generality of subsection (1), the Attorney-General may act under that subsection in relation to a forfeiture order if—

- (a) the order has, since its registration in Kenya, ceased to have effect;
- (b) the order was registered in contravention of section 121;
- (c) the Attorney-General considers that cancellation is appropriate having regard to the arrangements in force with the ICC in relation to the enforcement of orders of that kind; or
- (d) the ICC so requests.

(3) If, in accordance with subsection (1), the Attorney-General applies to the High Court for cancellation of the registration of a forfeiture order, the Court shall cancel the registration accordingly.

(4) If a forfeiture order registered under section 123 is discharged (in whole or in part) or is revoked, that discharge or revocation constitutes a ground for an application for cancellation of the order under this section.



*Section 153 which it is intended to amend—*

**153. Part 9 request involving national security**

(1) If a request for assistance made under Part 9 of the Rome Statute appears to concern the production of any documents or disclosure of evidence that would, in the opinion of the Attorney-General, prejudice Kenya's national security interests, that request shall be dealt with in accordance with the process specified in sections 156 and 157.

(2) If, having followed the specified process the matter is not able to be resolved, the Attorney-General may refuse the request or decline to authorise the production of the documents or giving of the evidence, as the case may be.

*Section 154 which it is intended to amend—*

**154. Information or evidence involving national security**

(1) Where a person who has been requested to give information or evidence—

- (a) refuses to do so on the ground that disclosure would prejudice the national security interests of Kenya; or
- (b) refers the matter to the Attorney-General on the ground that disclosure would prejudice the national security interests of Kenya, the Attorney-General shall determine whether or not he is of the opinion that the giving of information or evidence would prejudice Kenya's national security interests.

(2) If the Attorney-General confirms that he is of the opinion that disclosure would prejudice Kenya's national security interests, the matter shall be dealt with in accordance with the process specified in sections 156 and 157.

(3) If, having following the specified process, the matter has not been resolved, the Attorney-General may refuse the request or decline to authorise the provision of the information or giving of the evidence, as the case may be.

*Section 155 which it is intended to amend—*

**155. Other situations involving national security**

(1) If, in any circumstances other than those specified in sections 153 and 154, the Attorney-General is of the opinion that the disclosure of information or documents to the ICC would prejudice Kenya's national security interests, the matter shall be dealt with in accordance with the process specified in sections 156 and 157.



(2) Without limiting subsection (1), this section shall apply if the Attorney-General learns that information or documents are being, or are likely to be, disclosed at any stage of the proceedings, and intervenes in accordance with paragraph 4 of article 72 of the Rome Statute.

(3) If, having followed the specified process, the matter has not been resolved and the ICC has not made an order for disclosure under paragraph 7(b)(i) of article 72 of the Rome Statute, the Attorney-General may refuse the request or decline to authorise the provision of the information or giving of the evidence, as the case may be.

*Section 156 which it is intended to amend—*

### **156. Consultation with ICC required**

The Attorney-General shall consult with the ICC and, if appropriate, the defence, in accordance with paragraph 5 of article 72 of the Rome Statute.

*Section 157 which is intended to amend—*

### **157. Procedure where no resolution**

(1) If, after consultation, the Attorney-General considers that there are no means or conditions under which the information or documents or evidence could be provided or disclosed or given without prejudice to Kenya's national security interests, he shall notify the ICC, in accordance with paragraph 6 of article 72 of the Rome Statute, of the specific reasons for his decision, unless a specific description of the reasons would result itself in prejudice to Kenya's national security interests.

(2) The Attorney-General shall use his best endeavours with a view to reaching a mutually satisfactory outcome if—

- (a) the ICC determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused;
- (b) the issue of disclosure arises in the circumstances specified in section 153 or 154 and the Attorney-General is of the opinion that Kenya's national security interests would be prejudiced by disclosure; and
- (c) the ICC requests further consultations for the purpose of considering the representations, which may include hearings *in camera* and *ex parte*.

(3) The Attorney-General shall comply with an ICC disclosure order if—



- (a) the ICC determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the defendant;
- (b) the issue of disclosure arises in the circumstances specified in section 155(1); and
- (c) the ICC orders disclosure in accordance with paragraph 7(b)(i) of article 72 of the Rome Statute.

*Section 158 which it is intended to amend—*

**158. Attorney-General to take into account ICC's ability to refer matter to Security Council**

In determining what action to take in relation to a matter to which this Part applies, the Attorney-General shall take into account the power of the ICC to refer a matter to the Assembly of States Parties or to the Security Council in accordance with paragraph 7 of article 87 of the Rome Statute if the ICC considers that a requested State is not acting in accordance with its obligations under the Rome Statute.

*Section 159 which it is intended to amend—*

**159. Disclosure of information provided by third party**

(1) If the ICC requests the provision of a document or information that was provided or disclosed to Kenya in confidence by another State, intergovernmental organisation, or international organisation, the Attorney-General shall seek the consent of the originator before providing that document or information to the ICC.

(2) If the originator is a State Party that consents to disclosure of the information or document, the Attorney-General shall, subject to article 72 of the Rome Statute, provide that information or document to the ICC.

(3) If the originator is a State Party that undertakes to resolve the issue of disclosure with the ICC under article 73, the Attorney-General shall inform the ICC of that undertaking.

(4) If the originator is not a State Party and refuses to consent to disclosure, the Attorney-General shall inform the ICC that he is unable to provide the document or information because of an existing obligation of confidentiality to the originator.

*Section 160 which it is intended to amend—*

**160. Request for Kenya's consent to disclosure**

(1) Where a request is received from another State for Kenya's consent to the disclosure to the ICC of a document or information that had



been disclosed to the State in confidence, the Attorney-General shall either—

- (a) consent to the disclosure; or
- (b) undertake to resolve the matter with the ICC.

(2) The provision of an undertaking under subsection (1)(b) does not prevent the Attorney-General from refusing the assistance sought in accordance with section 159(4).

*Section 168 which it is intended to amend—*

### **168. Attorney-General or Minister may request assistance from ICC**

The Attorney-General or the Minister, as the case may be, may make a request to the ICC for assistance in accordance with this Part in an investigation into, or trial in respect of, conduct that may constitute a crime within the jurisdiction of the ICC or that constitutes a crime for which the maximum penalty under Kenyan law is a term of imprisonment of not less than five years.

*Section 171 which it is intended to amend—*

### **171. Certificates given by Attorney-General**

(1) If the Attorney-General receives a request for assistance from the ICC to which Part V relates, the Attorney-General may give a certificate certifying all or any of the following facts—

- (a) that a request for assistance has been made by the ICC;
- (b) that the request meets the requirements of this Act;
- (c) that the acceptance of the request has been duly made under and in accordance with this Act.

(2) In any proceedings under this Act, a certificate purporting to have been given under subsection (1) is, in the absence of proof to the contrary, sufficient evidence of the matters certified by the certificate.

### **The Biosafety Act, 2009 (No. 2 of 2009).**

*Section 53 which it is intended to amend—*

### **53. Restriction on institution of proceedings**

No proceedings for an offence under this Act shall be instituted without a prior written consent of the Attorney-General.

### **The Merchant Shipping Act, 2009 (No. 4 of 2009).**

*Section 16 which it is intended to amend—*



## **16. Restriction on ship owner**

(1) No owner of a ship or person providing the service of a shipping line shall, either directly or indirectly, provide in the maritime industry the service of crewing agencies, pilotage, clearing and forwarding agent, port facility operator, shipping agent, terminal operator, container freight station, quay side service provider, general ship contractor, haulage, empty container depots, ship chandler or such other service as the Minister may appoint under section 2.

(1A) The provisions of subsection (1) shall not apply to a shipping line wholly owned by the government.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

## **The Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2010).**

*Section 18 which is intended to amend—*

## **18. Relevant considerations**

(1) The Board shall, in determining the suitability of a judge or magistrate, consider—

- (a) whether the judge or magistrate meets the constitutional criteria for appointment as a judge of the superior courts or as a magistrate;
- (b) the past work record of the judge or magistrate, including prior judicial pronouncements, competence and diligence;
- (c) any pending or concluded criminal cases before a court of law against the Judge or Magistrate;
- (d) any recommendations for prosecution of the Judge or Magistrate by the Attorney-General or the Kenya Anti-Corruption Commission; and
- (e) pending complaints or other relevant information received from any person or body, including the—
  - (i) Law Society of Kenya;
  - (ii) Ethics and Anti-Corruption Commission;
  - (iii) Advocates Disciplinary Tribunal;
  - (iv) Advocates Complaints Commission;



- (v) Attorney-General;
- (vi) Commission on Administrative Justice;
- (vii) Kenya National Human Rights and Equality Commission;
- (viii) National Intelligence Service;
- (ix) National Police Service Commission; or
- (x) Judicial Service Commission.

### **The Prevention of Organised Crimes Act, 2010 (No. 6 of 2010).**

*Section 14 which it is intended to amend—*

#### **14. Penalty under this Part**

A person who commits an offence under this Part, shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding ten years or to both.

*Section 15 which it is intended to amend—*

#### **15. Property tracing**

(1) Where the Attorney-General has reasonable grounds to suspect that a person, a member of an organised criminal group or an organised criminal group has committed, is committing or is about to commit a crime or is in possession of property that belongs to an organised criminal group, he may, for the purposes of the investigation of an offence under this Act, apply to the High Court for an order—

- (a) compelling the person to deliver up any document or record relevant to identifying, locating or quantifying any property belonging to him or to the organised criminal group, or in his possession or control;
- (b) requiring a bank or any other financial institution, trustee, cash dealer or custodian to produce all information and deliver up all documents and records regarding any business transaction conducted by or on behalf of the person concerned.

(2) Where any person fails to comply with, is delaying or is otherwise obstructing an order made under this section, the High Court may, upon information sworn to that effect by the Attorney-General, authorise the Attorney-General or any officer deputed by him to enter any premises, including a bank or other financial institution, and search the premises and remove any documents or records for the purposes of executing the order.



(3) An order under this section shall lapse upon the expiry of thirty days from the date of the order unless the High Court, after hearing the parties, otherwise directs.

*Section 17 which it is intended to amend—*

**17. Seizure and detention of organized criminal group cash**

(9) In this section—

"authorized officer" means—

- (a) the Commissioner of Customs and Excise holding office under the Customs and Excise Act (Cap. 472);
- (b) the Commissioner of Police holding office under the Police Act (Cap. 84) (now repealed);
- (c) the Attorney-General; or
- (d) any other person upon whom written law vests functions of maintenance of law and order. "cash" has the meaning assigned to it under the Banking Act (Cap. 488).

**The Counter- Trafficking in Persons Act, 2010 (No. 8 of 2010).**

*Section 19 which it is intended to amend—*

**19. Establishment of the Advisory Committee (1)**

(2) The Counter Trafficking in Persons Advisory Committee shall consist of the following members—

- (a) the Permanent Secretary, in the Ministry responsible for matters relating to immigration;
- (b) the Permanent Secretary, in the Ministry responsible for matters relating to foreign affairs;
- (c) the Permanent Secretary, in the Ministry responsible for matters relating to gender and children;
- (d) the Permanent Secretary, in the Ministry responsible for matters relating to labour;
- (e) the Attorney General;
- (f) the Commissioner of Police;
- (g) a representative of the Kenya National Commission for Human Rights;
- (h) two representatives from civil society nominated by the respective civil societies dealing with issues relating to women;



and children with proven record of involvement in the prevention and suppression of trafficking in persons;

- (i) one person nominated by the Central Organization of Trade Unions;
- (j) one person nominated by the Federation of Kenya Employers;
- (k) such other members as may be co-opted by the Advisory Committee

**The Judicial Service Commission Act, 2011 (No.1 of 2011).**

*Section 38 which it is intended to amend—*

**38. Annual report**

(1) The Commission and the Judiciary shall each cause an annual report to be prepared for each financial year.

(2) The annual report shall contain, in respect to the year to which it relates—

- (a) the financial statements of the Commission and the Judiciary; and
- (b) a description of the activities of the Commission and the Judiciary.

(3) Without limiting what may be included in the annual report, the annual report shall include—

- (a) the information set out in the reports of the committees to which the annual report relates;
- (b) a summary of the steps taken during the year, in the identification, selection and appointment of judicial officers and staff;
- (c) information relating to disposal of cases;
- (d) information on issues of access to justice;
- (e) information relating to performance of the judiciary and attendant challenges; and
- (f) such other statistical information as the Commission and the Judiciary considers appropriate relating to their functions and judicial activities.

(4) The Commission and the Judiciary shall cause the annual report to be published in the Gazette and shall send a copy of the report to each



of the two Clerks of the two Houses of Parliament for it to be placed before the respective Houses for debate and adoption.

**The Independent Electoral and Boundaries Commission Act (No. 9 of 2011).**

*Section 24 which it is intended to amend—*

**24. Annual report**

(1) Within three months after the end of each financial year, the Commission shall present its annual report to the President and submit the same to Parliament.

(2) The annual report shall in respect of the year to which it relates, contain—

- (a) the financial statements of the Commission;
- (b) the activities the Commission has undertaken;
  - (ba) progress made in the continuous registration of citizens as voters and the progressive realisation of the right to vote of citizens residing outside Kenya and prisoners; and
- (c) any other information, the Commission may consider relevant.

(3) The Commission shall publish and publicize the annual report.

**The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011).**

*Section 24 which is intended to amend—*

**24. Report of the Commission**

(1) The report of the Commission under Article 254 of the Constitution shall, in respect of the financial year to which it relates, contain—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) such other statistical information as the Commission considers appropriate relating to the Commission's functions; and
- (d) any other information relating to its functions that the Commission considers necessary.

**The Kenya National Commission on Human Rights, 2011 (No. 14 of 2011).**

*Section 53 which it is intended to amend—*



**53. Report of the Commission**

(1) The report of the Commission under Article 254 of the Constitution shall, in respect of the financial year to which it relates, contain—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) recommendations on specific actions to be taken in furtherance of the findings of the Commission;
- (d) recommendations on legal and administrative measures to address specific concerns identified by the Commission; and
- (e) any other information relating to its functions that the Commission considers relevant.

(2) The Commission shall publish the report in the Gazette and in at least one newspaper with national circulation.

(3) The President, the National Assembly or the Senate may at any time require the Commission to submit a report on a particular issue.

**The National Gender and Equality Commission, 2011 (No. 15 of 2011).**

*Section 53 which it is intended to amend—*

**53. Report of the Commission**

(1) The report of the Commission under Article 254 of the Constitution shall, in respect of the financial year to which it relates, contain—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) recommendations on specific actions to be taken in furtherance of the findings of the Commission;
- (d) recommendations on legal and administrative measures to address specific concerns identified by the Commission; and
- (e) any other information relating to its functions that the Commission considers relevant.

(2) The Commission shall publish the report in the Gazette and in at least one newspaper with national circulation.



(3) The President, the National Assembly or the Senate may at any time require the Commission to submit a report on a particular issue.

**The Commission on Revenue Allocation, 2011 (No. 16 of 2011).**

*Section 23 which it is intended to amend—*

**23. Report of the Commission**

The report of the Commission under Article 254 of the Commission shall, in respect of the financial year to which it relates, contain —

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) such other statistical information as the Commission considers appropriate relating to the Commission's functions; and
- (d) any other information relating to its functions that the Commission considers necessary.

**The Ethics and Anti-Corruption Commission Act (No. 22 of 2011).**

*Section 27 which it is intended to amend—*

**27. Reports**

(2) The Commission shall submit the annual report to the President and the National Assembly three months after the end of the year to which it relates.

(3) The annual report shall contain, in respect of the year to which it relates—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) such other statistical information as the Commission may consider appropriate relating to the Commission's functions;
- (d) any recommendations made by the Commission to State departments or any person and the action taken;
- (e) the impact of the exercise of any of its mandate or function;
- (f) any impediments to the achievements of the objects and functions under the Constitution, this Act or any written law;
- (g) the state of compliance with the provisions of section 18(4)(b);  
and



- (h) any other information relating to its functions that the Commission considers necessary.

(4) The Commission shall cause the annual report to be published and the report shall be publicized in such manner as the Commission may determine.

**The Tourism Act, 2011 (No.28 of 2011).**

*Section 116 which it is intended to amend—*

**116. Prosecutorial powers**

An authorized officer may, with the leave of the Attorney-General given under the Criminal Procedure Code (Cap. 75), conduct prosecution for an offence committed under this Act.

**The National Police Service Commission Act (No. 30 of 2011).**

*Section 26 which it is intended to amend—*

**26. Annual report**

(1) The Commission shall cause an annual report to be prepared for each financial year.

(2) The Commission shall submit the annual report to the President and the National Assembly three months after the end of the year to which it relates.

**The National Land Commission Act (No. 5 of 2012).**

*Section 33 which it is intended to amend—*

**33. Annual report**

(1) The report of the Commission under Article 254 of the Constitution shall, in respect of the financial year to which it relates, contain—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) information relating to the progress made in the registration of title in land;
- (d) recommendations made by the Commission to the county or national governments or to any state agency or organ and the action taken on such recommendations;
- (e) any impediments to the work of the Commission; and



- (f) such other information as the Commission considers appropriate in relation to the functions of the Commission.

(2) The Commission shall cause the annual report and any information as may be required under Article 254(3) of the Constitution to be published and publicized in such manner as the Commission may determine.

### **The Leadership and Integrity Act, 2012 (No. 19 of 2012).**

*Section 12A which it is intended to amend—*

#### **12A. Self-declaration**

Any person intending to be appointed to a State office shall submit to the Commission a self-declaration form in the form set out in the First Schedule.

*Section 19 which it is intended to amend—*

#### **19. Bank accounts outside Kenya**

(6) Without prejudice to the foregoing provisions of this section, a State officer who fails to declare operation or control of a bank account outside Kenya commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years, or a fine not exceeding five million shillings, or both.

*Section 40 which it is intended to amend—*

#### **40. State officer to sign Specific Leadership and Integrity Code**

Upon appointment or election, a State officer shall sign and commit to the specific Leadership and Integrity Code issued by the relevant public entity at the time of taking the oath of office or within seven days of assuming a State office.

### **The Teachers Service Commission Act, 2012 (No. 20 of 2012).**

*Section 41 which it is intended to amend—*

#### **41. Annual report**

(1) The report of the Commission under Article 254 of the Constitution, shall, in respect of the year to which it relates—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission; and
- (c) any other information relating to its functions that, the Commission may consider necessary.



(2) The Commission shall cause the annual report to be published in the *Gazette* and publicised and such other manner as the Commission may determine.

### **The National Transport and Safety Authority, 2012 (No. 33 of 2012).**

*Section 16 which it is intended to amend—*

#### **16. Tenure of office of Director-General**

The Director-General shall be appointed for a term of three years and shall be eligible for reappointment for one further term.

### **The Value Added Tax Act, 2013 (No. 35 of 2013).**

*Part I of the First Schedule which it is intended to amend—*

133. Tourniquets of tariff number 3926.90.99 for use by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.

### **The Excise Duty Act, 2015 (No. 23 of 2015).**

*Part I of the First Schedule which it is intended to amend—*

3905.91.00 Emulsion VAM	10%
3905.19.00 Homopolymers	10%
3906.90.00 Emulsion B . A . M	10%

### **Kenya Roads Board Act, 1999 (No. 7 of 1999)**

*Section 7 which it is intended to amend—*

#### **7. Membership of the Board**

(1) The Board shall consist of—

- (a) a non-executive chairman to be appointed by the President from among the members appointed under paragraph (h);
- (b) the Director General whose position shall be filled through public advertisement;
- (c) the Permanent Secretary in the Ministry for the time being responsible for matters relating to Roads or his designated alternate, not being below the level of Deputy Secretary;
- (d) the Permanent Secretary of the Ministry for the time being responsible for matters relating to Finance or his designated alternate, not being below the level of Deputy Secretary;



- (e) the Permanent Secretary in the Ministry for the time being responsible for Local Authorities or his designated alternate not below the level of Deputy Secretary;
- (f) the Permanent Secretary in the Ministry for the time being responsible for matters relating to regional co-operation or his designated alternate, not being below the level of Deputy Secretary;
- (g) the Permanent Secretary in the Ministry for the time being responsible for matters relating to Transport and Communications or his designated alternate, not being below the level of Deputy Secretary;
- (h) eight other members comprising, representatives of each of the organisations specified in the First Schedule and appointed by the Minister from amongst three persons nominated by each of the organisations.

(2) The Minister may, by notice in the *Gazette* amend the First Schedule.

(3) No person shall qualify for appointment as a member of the Board under paragraph (h) of subsection (1) unless such person is the holder of the Kenya Certificate of Secondary Education or an equivalent qualification and has had at least ten years practical experience.

(4) The chairman and members of the Board, other than the *ex officio* members shall hold office for a period of three years from the date of appointment, but shall be eligible for re-appointment for one further term of a period not exceeding three years.

(5) The names of all members of the Board as first constituted and at every change in membership thereafter shall be published in the *Kenya Gazette*.

### **The Controller of Budget Act, 2016 (No. 26 of 2016).**

*Section 19 which it is intended to amend—*

#### **19. Annual report (1)**

The Controller of Budget shall cause an annual report to be prepared for each financial year.

(2) The annual report shall contain, in respect of the year to which it relates—

- (a) the audited financial statements of the Controller of Budget;
- (b) a description of the activities of the Controller of Budget;



(c) such other statistical information as the Controller of Budget considers appropriate; and

(d) any other information relating to his or her functions that the Controller of Budget considers necessary.

(3) The Controller of Budget shall cause the annual report to be published and publicised.

### **The Miscellaneous Fees and Levies Act, 2016 (No. 29 of 2016).**

*Section 9B which it is intended to amend—*

#### **9B. Application of Tax Procedures Act, 2015 to excess tax refunds**

The provisions of section 47 of the Tax Procedures Act, 2015 shall apply for the purposes of—

(a) an application for refunds, ascertainment and repayment of fees and levies overpaid or paid in error under this Act; or

(b) the determination by the Commissioner of penalties and interests on fees that remain unpaid.

### **The Water Act, 2016 (No. 43 of 2016).**

*Section 14 which it is intended to amend—*

#### **14. Management Board**

(1) The powers and functions of the Authority shall be exercised and performed under the direction of a Management Board, which consists of—

(a) a chairperson, who shall be appointed by the President; and

(b) the Principal Secretary responsible for matters relating to finance or his representative;

(c) the Principal Secretary responsible for matters relating to water or his representative;

(d) the Principal Secretary responsible for matters relating to the environment or his representative;

(e) the Principal Secretary responsible for matters relating to land or his representative;

(f) four other members, who shall be appointed by the Cabinet Secretary; and

(g) the Chief Executive Officer.

*Section 17 which it is intended to amend—*



### **17. Chief Executive Officer**

(1) The Cabinet Secretary shall, on the recommendation of the Management Board, appoint a Chief Executive Officer of the Authority on such terms and conditions as may be specified in the instrument of appointment.

*Section 31 which it is intended to amend—*

### **31. Water Harvesting and Storage Board**

(1) The powers and functions of the Water Storage Authority shall be exercised and performed under the direction of a Water Harvesting and Storage Board which shall consist of—

- (a) a chairperson, who shall be appointed by the President;
- (b) the Principal Secretary responsible for matters relating to water;
- (c) the Principal Secretary responsible for matters relating to land;
- (d) the Principal Secretary responsible for finance;
- (e) five other members, who shall be appointed by the Cabinet Secretary; and
- (f) a Chief Executive Officer.

*Section 33 which it is intended to amend—*

### **33. Chief Executive officer**

(1) The Cabinet Secretary, on the recommendation of the Water Storage Board may appoint the Chief Executive Officer of the Water Storage Authority, on such terms and conditions as the Cabinet Secretary for public service may determine on the advice of the Salaries and Remuneration Commission.

*Section 66 which it is intended to amend—*

### **66. Boards of the water works development agencies**

(1) Each water works development agency shall consist of —

- (a) a chairperson, who shall be appointed by the Cabinet Secretary from a county within the basin area;
- (b) four other members who shall be appointed by the Cabinet Secretary from counties within the basin area; and
- (c) the Chief Executive Officer.

(2) The First Schedule has effect with respect to the membership and procedure of the water works development agencies.



*Section 71 which it is intended to amend—*

### **71. Regulatory Board**

(1) The powers and functions of the Regulatory Board shall be exercised and performed under the direction of the Regulatory Board, which shall consist of—

- (a) a chairperson appointed by the President;
- (b) four other members appointed by the Cabinet Secretary; and
- (c) the Chief Executive Officer.

*Section 73 which it is intended to amend—*

### **73. Employees of the Regulatory Board**

(1) There shall be a Chief Executive Officer of the Regulatory Board who shall be appointed by the Cabinet Secretary on the recommendation of the Regulatory Board, on such terms and conditions of service as may be prescribed by the Cabinet Secretary responsible for public service on the advice from the Salaries and Remuneration Commission.

(2) The Chief Executive Officer shall be the principal officer of the Regulatory Board and, subject to the directions of the Regulatory Board shall be responsible for management of the Regulatory Board.

(3) The Regulatory Board may appoint such officers and other employees as may be necessary for the exercise and performance of its powers and functions, upon such terms and conditions as the Cabinet Secretary responsible for public service may determine upon consideration of advice from the Salaries and Remuneration Commission.

*Section 115 which it is intended to amend—*

### **115. Board of Trustees of the Fund**

(2) The Board of Trustees shall consist of a chairperson and six other members recruited in accordance with the First Schedule.

*Section 118 which it is intended to amend—*

### **118. Staff of the Fund**

(1) The Fund shall have Chief Executive Officer who shall be appointed by the Board of Trustees on such terms and conditions of service as the Cabinet Secretary responsible for matters relating to public service on the advice of the Salaries and Remuneration Regulatory Authority may determine.

### **The Bribery Act, 2016 (No. 47 of 2016).**

*Section 1 which it is intended to amend—*



## **Short title**

This Act may be cited as the Bribery Act, 2016.

*Section 4 which it is intended to amend—*

## **4. Application of the Act**

This Act shall apply to the public, public officers and private entities.

*Section 5 which it is intended to amend—*

## **5. Giving a bribe**

(1) A person commits the offence of giving a bribe if the person offers, promises or gives a financial or other advantage to another person, who knows or believes the acceptance of the financial or other advantage would itself constitute the improper performance of a relevant function or activity.

(2) Subject to subsection (1), it shall not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned, or whether the advantage is offered, promised or given by a person directly or through a third party

*Section 7 which it is intended to amend—*

## **7. Function or activity to which a bribe relates**

(1) For the purposes of this Act, a function or activity shall be construed to be a relevant function or activity if —

(a) it includes —

- (i) any function of a public nature;
- (ii) any function carried out by a State officer or public officer, pursuant to his or her duties;
- (iii) any function carried out by a foreign public official, pursuant to his or her duties;
- (iv) any activity connected with a business;
- (v) any activity performed in the course of a person's employment, and
- (vi) any activity performed by or on behalf of a body of persons whether corporate or otherwise;

(b) it meets one or more of the following conditions —



- (i) that the person performing the function or activity is expected to perform it in good faith;

*Section 10 which it is intended to amend—*

#### **10. Failure of private entity to prevent bribery**

A private entity commits an offence under this section if a person associated with it, bribes another person intending to obtain or retain —

- (a) business for the private entity; or
- (b) advantage in the conduct of business by the private entity

*Section 14 which it is intended to amend—*

#### **14. Duty to report**

(1) Every state officer, public officer or any other person holding a position of authority in a public or private entity shall report to the Commission within a period of twenty-four hours any knowledge or suspicion of instances of bribery.

*Section 15 which it is intended to amend—*

#### **15. Offences under this Act: territorial application**

(1) Conduct by a citizen of Kenya or by a private or public entity within the meaning of sections 11 and 12 which takes place outside Kenya, shall constitute an offence under this Act if the conduct would constitute an offence under this Act if it took place in Kenya.

#### **The Public Service Commission Act, 2017 (No. 10 of 2017).**

*Section 90 which it is intended to amend—*

#### **90. Annual Report**

(1) The Commission shall within three months after the closure of the financial year prepare a report for submission to the President and Parliament.

#### **The Scrap Metal Act, 2015 (No. 1 of 2015)**

*Section 4 which it is intended to amend—*

#### **4. Composition of the Council**

- (1) The Council shall consist of—
  - (a) a chairperson appointed by the Cabinet Secretary who has at least five years' experience in the public or private sector;



- (b) the Principal Secretary of the Ministry for the time being responsible for matters relating to transport or representative;
- (c) the Commissioner General of the Kenya Revenue Authority or a representative;
- (d) the Inspector-General of Police or a representative;
- (e) the Principal Secretary of the Ministry for the time being responsible for matters relating to industrialisation or his or her representative;
- (f) the following persons, nominated as follows, and appointed by the Cabinet Secretary —
  - (i) one person nominated by the Scrap Metal Dealers Association;
  - (ii) one person nominated by the metal cottage industry;
  - (iii) one person nominated by the Kenya Association of Manufacturers ;
  - (iv) one person nominated by large utility companies or agencies in charge of infrastructure, to be appointed on rotational basis;
- (v) one person nominated by the Consumer Federation of Kenya.

*Section 6 which it is intended to amend—*

## **6. Functions of the Council**

- (1) The functions of the Council shall be to —
  - (a) advice the Cabinet Secretary on —
    - (i) the appropriate measures and mechanisms for regulating the scrap metal industry in ensuring economic growth, protection of public health and conformity to the principles of environmental stewardship as required by the Basel Convention;
    - (ii) the appropriate measures and mechanisms for protecting public interest against vandalism, theft of utility infrastructure and private property;
    - (iii) the methods of attracting investors on the utilization of excess scrap materials and supporting existing users of scrap metal;
    - (iv) the applicable license fees to be prescribed under this Act;



*Section 9 which it is intended to amend—*

**9. Restriction from dealing in scrap metal**

(1) A person shall not deal in scrap metal, unless that person has a licence issued by the Council and is a member of Scrap Metal Dealers Association.

*Section 11 which it is intended to amend—*

**11. Issue of licence**

Every licence granted or renewed under this section shall—

- (a) be issued in the form prescribed in the Third Schedule;
- (b) be valid for one year;
- (c) specify the licensee as the principal or agent to deal in scrap metal;
- (d) specify the location of all the premises in which the licensee is authorized to deal in scrap metal;
- (e) specify any type of scrap metal the licensee may or may not deal in; and
- (f) be subject to such conditions as the Council may consider necessary.

*Section 18 which it is intended to amend—*

**18. Register by licensee**

(3) Any licensee, servant or agent who fails to comply with this section commits an offence and is liable on conviction—

- (a) for a first offence, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both; and
- (b) for a second or subsequent offence to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both and such license shall be revoked.

*Section 20 which it is intended to amend—*

**20. Restriction on licensees**

(4) Any licensee who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one million shillings and, where such offence continues after conviction, to a fine not exceeding two thousand shillings for each day in which such offence continues or until the license is revoked.



*Section 22 which it is intended to amend—*

**22. Information regarding stolen or lost property**

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

*Section 24 which it is intended to amend—*

**24. Destruction of infrastructure**

(1) A person shall not remove, deface or destroy any scrap metal from the infrastructure designed for roads, bridges, railways, pipelines, telecommunication, electricity, water and sewerage, or any government infrastructure project.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding three years or to both.

*Section 26 which it is intended to amend—*

**26. Exports of scrap metal**

(1) A person shall not export scrap metal in any form.

(2) Notwithstanding subsection (1), the Cabinet Secretary for matters relating to finance, in consultation with the Cabinet Secretary responsible for industrialization and with the recommendation of the Council, may, under such circumstances as may be prescribed, authorize the export of specific scrap metal for a specified period.

(3) A certificate for each consignment shall be issued by the Principal Secretary.

(4) Any exemption allowed under this section shall be valid for six months from the date of issue of the certificate of exemption.

(5) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both.

*Section 30 which it is intended to amend—*

**30. Power of entry**

(1) An inspector may at any reasonable time, with or without a search warrant—

- (a) enter upon and inspect any place, premises or vehicle at, on or in which goods that are reasonably suspected of being stolen scrap



metal or vandalized infrastructure are to be found and make a record as provided in the prescribed form;

- (b) take the steps that may be reasonably necessary to terminate the deal or transaction on vandalized or stolen scrap metal at, on or in such place, premises or vehicle, and to prevent the recurrence of any such act in future:

Provided that the actions set out herein shall not include the destruction or alienation of the relevant scrap metal unless authorize by an order issued by a court of competent jurisdiction,

- (c) seize, detain, and, where applicable, remove for detention, all the scrap metal found at, on or in such place, premises or vehicle or other modes of conveyance;
- (d) seize detain, and, where applicable, remove for detention, any tools which may be used in processing such scrap metal;
- (e) if the inspector suspects that a person at, on or in such place, premises or vehicle may furnish any information with respect to any dealing in vandalized or stolen scrap metal—
  - (i) question that person and take down a statement from that person;
  - (ii) demand from that person any book, document, article, item or object which in any way may assist in identifying the location, source or destination of the scrap metal, or the identity and address of any person who may be involved in dealing as a supplier, miller, distributor, exporter or clearing and forwarding agent of the scrap metal.

## **The Energy Act, 2019 (No. 1 of 2019)**

*Section 2 which it is intended to amend—*

### **2. Interpretation**

"distribution licence" means any document or instrument authorizing a person to operate a distribution system for the purpose of enabling supply of electrical energy to consumers or to other licensees;

*Section 10 which it is intended to amend—*

### **10. Functions of the Authority**

The functions of the Authority shall be to—

- (a) regulate—



- (i) generation, importation, exportation, transmission, distribution, supply and use of electrical energy with the exception of licensing of nuclear facilities;
- (ii) importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil;

*Section 12 which it is intended to amend—*

## **12. Board of the Authority**

(1) The management of the Authority shall vest in the Board of Directors of the Authority consisting of—

- (a) a Chairperson who shall be appointed by the President;
- (b) the Principal Secretary responsible for Energy or his representative;
- (c) the Principal Secretary responsible for Petroleum or his representative;
- (d) the Principal Secretary in the National Treasury or his or her authorized representative;
- (e) one County Executive Committee member responsible for energy and petroleum or his representative nominated by the Council of County Governors;
- (f) the Director-General; and
- (g) five other members not being public officers appointed by the Cabinet Secretary.

*Section 20 which it is intended to amend—*

## **20. Funds of the Authority**

- (1) The funds of the Authority shall consist of—
- (a) levies not exceeding one half of a percent on the sales of electricity and petroleum products;
  - (b) licence fees;
  - (c) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
  - (d) such monies as may be provided by Parliament for the purposes of the Authority;



- (e) any revenues generated from any proprietary interest held by the Authority whether movable or immovable;
- (f) interest from bank deposits; and
- (g) all monies from any other source provided for or donated or lent to the Authority;

Provided that any monies collected by the Authority including levies, fines and penalties in exercise of its functions shall be paid into the Consolidated Fund.

*Section 26 which it is intended to amend—*

#### **26. Members of the Tribunal**

(4) The Chairperson, Vice-Chairperson and members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms office shall fall at different times.

*Section 45 which it is intended to amend—*

#### **45. Board of the Corporation**

(1) The management of the Corporation shall vest in the Board of Directors of the Corporation which shall consist of—

- (a) a Chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry responsible for energy or his representative;
- (c) the Principal Secretary in the National Treasury or his representative;
- (d) the Chief Executive Officer who shall be the Secretary to the Board;
- (e) three members appointed by the Cabinet Secretary; and
- (f) four other members appointed by the Council of County Governors

*Section 76 which it is intended to amend—*

#### **76. Establishment of Renewable Energy Resource Advisory Committee**

(2) The Renewable Energy Resource Advisory Committee is composed of—

- (a) principal secretary in the Ministry of Energy or his or her representative who shall be the Chairperson;



- (b) chief executive officer of the Corporation or his representative, who shall be the Secretary;
- (c) managing director of the Geothermal Development Company Limited or his or her representative;
- (d) managing director of the Kenya Electricity Generating Company Limited or his or her representative;
- (e) Attorney-General or his or her representative;
- (f) principal secretary of the National Treasury or his or her representative; and
- (g) principal secretary responsible for matters relating to natural resources or his or her representative

*Section 82 which it is intended to amend—*

**82. Renewal and surrender of licence, etc**

The Cabinet Secretary may, on the advice of the Authority—

- (a) renew a licence for a term not exceeding five years after the initial expiry or any renewal thereof subject to such terms and conditions as the Cabinet Secretary may consider necessary;
- (b) wholly or partly remit all or any of the terms and conditions contained in any licence where, owing to special circumstances, in his opinion, compliance therewith would be impossible or great hardship would be inflicted upon the licensee;
- (c) extend time to the licensee for complying with the terms and conditions of any licence upon such terms and conditions as the Cabinet Secretary may consider necessary; or
- (d) accept, whether with a view to renewing or re issuing any licence or otherwise the surrender of any licence or any part of the area comprised therein upon such terms and conditions as the Cabinet Secretary may consider necessary, but no such surrender shall affect any liability incurred by the licensee before the surrender shall have taken effect.

*Section 98 which it is intended to amend—*

**98. Factors to be considered in reviewing an application**

(1) The Authority shall, in granting or rejecting an application for a licence or permit, take into consideration—

- (a) the impact of the undertaking on the social, cultural or recreational life of the community;



- (b) the need to protect the environment and to conserve the natural resources in accordance with the environmental, health, and maritime laws and international maritime treaties ratified by Kenya and other guidelines developed by the Authority;
- (c) compliance with Occupational Safety and Health Act (No. 15 of 2007) or other safety and health standards recommended by the Authority in consultation with the relevant statutory body;
- (d) compliance this Act and the relevant Kenyan Standard and in the absence of such standard, any international standard recommended by the Authority in consultation with the Kenya Bureau of Standards;
- (e) land use or the location of the undertaking;
- (f) economic and financial benefits to the country or area of supply of the undertaking;
- (g) the cost of the undertaking and financing arrangements;
- (h) the ability of the applicant to operate in a manner designed to protect the health and safety of users of the service for which the licence or permit is required and other members of the public who would be affected by the undertaking;
- (i) the technical and financial capacity of the applicant to render the service for which the licence or permit is required; and
- (j) any other matter that the Authority may consider likely to have a bearing on the undertaking.

*Section 100 which it is intended to amend—*

#### **100. Forms and conditions of a licence or permit**

(1) Every licence or permit shall be in such form as the Authority may determine and shall, subject to subsection (2), contain such particulars or conditions where applicable—

- (a) the duration of the licence or permit;
- (b) the type coal or coal products;
- (c) the market area segments; and
- (d) any other matter connected with the carrying on of the undertaking.

*Section 117 which it is intended to amend—*

#### **117. Requirement of a licence**



A person who wishes to carry out the generation, exportation, importation, transmission, distribution and retail supply of electricity must apply for a licence as the case may be to the Authority in accordance with the provisions of this Act: Provided that a person shall not require any authorization to generate electrical energy for own use of a capacity not exceeding one megawatt

*Section 129 which it is intended to amend—*

### **129. Accounts, records and reports of licensee**

(2) A licensee shall, at his own cost, cause the annual accounts to be examined and audited by independent auditors and submit the audited accounts to the Authority within three months after the end of each financial year

*Section 149 which it is intended to amend—*

### **149. Certificates for electrical workers**

(3) A licence for electrical installation work shall be issued for a term of three years and may be renewed for a similar term upon expiry, subject to the holder satisfying such continuing technical trainings as may be prescribed.

*Section 154 which it is intended to amend—*

### **154. Metering of supply to consumers**

(2) The retailer shall supply and fix meters upon the premises of the consumer and connect the supply system therewith:

Provided that the licensee may agree to the value of the supply to any consumer being ascertained by a private metre belonging to the consumer.

*Section 166 which it is intended to amend—*

### **166. Penalties and compensation for failure and defects in electricity supply**

(3) For the avoidance of doubt, the licensee shall not be liable to pay compensation under subsection (2) if the failure, poor quality or irregularity of electricity supply was caused by third party interference to the licensee's electricity supply lines or inevitable accident or force majeure was so slight as not to materially affect the quality or value of the supply.

(4) The Cabinet Secretary shall make regulations to give effect to this section within six months of the coming into force of this Act.

*Section 167 which it is intended to amend—*



**167. Regulations for electrical energy**

(1) The Cabinet Secretary may upon recommendation of the Authority make such regulations as may be necessary or expedient for the achievement of the objectives and purposes of this Act and in particular, for all or any of the following purposes—

(o) carrying out electrical installation work by an electrician and an electrical contractor.

*Section 169 which it is intended to amend—*

**169. Offences deemed to be economic crimes**

(2) Any vessel used to convey the vandalised equipment or appliance in the attempted vandalism detailed in subsection (1) shall be forfeited to the state.

*Section 187 which is intended to amend—*

**187. Energy Efficiency and Conservation Programme**

The Authority shall coordinate the development and implementation of a prudent national energy efficiency and conservation programme.

*Section 199 which it is intended to amend—*

**199. Power of County Government to make rules**

(1) A County Government may, by notification in the, make rules for carrying out the provisions of this Act and not inconsistent with the rules and regulations, if any, made by the National Government.

*Section 208 which it is intended to amend—*

**208. Cabinet Secretary may make regulations generally**

(1) The Cabinet Secretary may, on the recommendation of the Authority and subject to section 167, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or expedient to be prescribed for carrying out or giving effect to this Act.