

**THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL,
2009**

A Bill for

**An Act of Parliament to make minor amendments to
statute law**

ENACTED by the Parliament of Kenya, as follows—

Short title. **1.** This Act may be cited as the Statute Law
(Miscellaneous Amendments) Act, 2009.

Amendment
of written
laws. **2.** The several written 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.

SCHEDULE (s. 2)

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
The Interpretation and General Provisions Act (Cap. 2)	New	Insert the following new section immediately after section 3— 3A. (1) A reference in a written law, in relation to any matter, to a Minister or an official described by a designation which, by reason of any change in the organization of any ministry or department, whether or not by the transfer of functions

from one ministry or department to another or others, is no longer appropriate, shall be construed in relation to that matter, as a reference to the Minister or either official for the time being charged with the responsibility for the matter.

(2) A reference in a written law, in relation to any ministry or department or other unit of Government described by a designation which, by reason of any change in the organization of any ministry or department or other unit of Government (including the abolition or the amalgamation of any of them or the creation of new ones), is no longer appropriate, shall be construed, in relation to that matter, as a reference to the ministry or department, or as the case may be, to any other unit of the Government for the time being charged with responsibility for the matter.

The Appellate Jurisdiction Act (Cap.9)	New	Insert the following new sections immediately after section 3 -
		<p>Objective of Act.</p> <p>3A.(1) The overriding objective of this Act and rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of appeals governed by the Act.</p>
		<p>(2) The Court shall in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).</p>
		<p>(3) An advocate in an appeal presented to the Court is under a duty to assist the court to further the overriding objective and, to that effect, to participate in the processes of the Court and to comply with directions and orders of the Court.</p>
		<p>Duty of Court.</p> <p>3B. (1) For the purpose of furthering the overriding objective referred to in section 3A, the Court shall handle all matters presented before it for the purpose of attaining the following aims –</p> <ul style="list-style-type: none">(a) the just determination of the proceedings;(b) the efficient use of available judicial and

administrative
resources;

(c) the timely dispose; of
the proceeding, and all
other proceedings in
the court, at a cost
affordable by the
respective parties; and

(d) the use of suitable
technology.

The Advocates Act (Cap.16) S.17 Insert the following new subsection immediately after subsection (2) –

(3) The grant shall be made upon receipt of a list of names submitted by the Committee on Senior Counsel through the Chief Justice.

S.18 Insert the following new subsection immediately after subsection (3) –

(4) The Attorney-General shall cause to be published in the Gazette the names of the advocates upon whom the rank of Senior Counsel is conferred.

S.81(1) Insert the following new paragraph immediately after paragraph (e) –

(ee) the procedure for the conferment of, and the privileges attached to, the rank of Senior Counsel.

The Civil Procedure Act. (Cap. 21) New Insert the following new sections immediately after section 1 –

Objective of Act. 1A (1) The overriding objective of this Act and rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes governed by the Act.

(2) The Court shall in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective in subsection (1).

(3) A party to civil proceedings or an advocate for such a party is under a duty to assist the court to further the overriding objective and, to that effect, to participate in the processes of the court and to comply with directions and orders of the court.

Duty of Court. 1B. (1) For the purpose of furthering the overriding objective referred to in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims –

- (a) the just determination of the proceedings;
- (b) the efficient disposal of the business of the Court;
- (c) the efficient disposal of the business of the Court;

(d) the efficient use of available judicial and administrative resources;

(e) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and

(f) the use of suitable technology.

S.8 1 Insert the following in subsection (2) immediately after paragraph (i) –

(iA) the selection of mediators and the hearing of matters referred to mediation under this Act.

Insert the following new subsection –

(3) The Chief Justice may, in consultation with the Rules Committee, issue practice notes or directions to resolve procedural difficulties arising under this Act to facilitate the attainment of the objective of this Act as specified in section 1A.

Insert the following new Part immediately after Part X-

PART XA – MEDIATION OF DISPUTES

Establishment of Mediation Accreditation Committee.

81A. (1) There shall be a Mediation Accreditation Committee which shall be appointed by the Chief Justice.

(2) The Committee shall consist of -

(a) the chairman of the Rules Committee;

(a) one member nominated by the Attorney-General;

(c) two members nominated by the Law Society; and

(d) two other persons, nominated by the following bodies respectively –

(i) Chartered Institute of Arbitrators Kenya; and

(ii) the Kenya Private Sector Alliance.

(3) The functions of the Committee shall be to –

(a) determine the criteria for certification of mediators;

(b) propose rules for certification of mediators;

(c) maintain a register of

qualified mediators;

(d) enforce such code of ethics for mediators as may be prescribed; and

(e) set up appropriate training programmes for mediators.

Reference of cases to mediation.

81B.(1) The Court may -

(a) on the request of the parties concerned; or

(b) where it deems it appropriate, to do so,

direct that any dispute presented before it be referred to mediation.

(2) Where a dispute is referred to mediation under subsection (1), the parties thereto shall select for that purpose a mediator whose name appears in the mediation register maintained by the Accreditation Committee.

(3) A mediation under this Part shall be conducted in accordance with such procedure as may be agreed upon by the parties or as the Court referring the matter to mediation may in its

discretion direct.

(4) An agreement between parties to a dispute as a result of a process of mediation under this Part shall be recorded in writing and registered with the Court giving the direction under subsection (1), and shall be enforceable as if it were a judgment of that Court.

(5) No appeal shall lie against an agreement referred to in subsection (4).

Interpretation
of Part.

81C. For the purpose of this Part -

“mediation” means an informal non-adversarial process carried out under this part, whereby an impartial mediator encourages and facilitates the resolution of a dispute between two or more parties, but does not include attempts made by a judge to settle a dispute within the course of judicial proceedings related thereto;

“mediator” means a impartial third party selected to carry out a mediation.

The Films and Stage Plays Act (Cap.222)	S.2	Delete the words “Board of Censors” appearing in the definition of “Board” and substitute therefore the words “Kenya Film Classification Board”.
	S.11	Delete and substitute therefor the following new section:- 11.(1) There is hereby established a board to be known as the Kenya Film Classification Board. (2) The Board shall be a body corporate with perpetual succession and a common seal, and capable, in its corporate name, of – (a) suing and being sued; (b) holding and alienating movable and immovable property; and (c) doing or performing all such other things or acts for the proper performance of its functions as may be lawfully done by a body corporate.
	New	Insert the following section immediately after section 11 - Membership. 11A. The Board shall consist of - (a) a Chairman appointed by the Minister; (b) the Permanent Secretary in the Ministry of Information

and Communications;

- (c) the Permanent Secretary to the Treasury;
- (d) the chief executive officer; and
- (e) eight other members appointed by the Minister by virtue of their knowledge and experience in –
 - (i) psychology;
 - (ii) women's and children's rights;
 - (iii) religion;
 - (iv) cinematography;
 - (v) such other field as the Minister may deem appropriate.

Co-option of members. **11B.** The Board may from time to time co-opt such number of persons as it may determine having regard to the number of films requiring examination to examine and classify films.

Staff of the Board. **11C.** The Board may employ such number of employees, including the chief executive officer, on

such terms and conditions of service as the Minister may in consultation with the committee approve.

Duties of the chief executive officer.

11D. The chief executive officer shall be the accounting officer of the Board and responsible for the day-to-day management of the affairs of the Board, and any other function prescribed under this Act or assigned by the Board.

S.12 Delete subsection (1) and (2) substitute therefor the following new subsections -

(1) No person shall exhibit any film at an exhibition to which the public are admitted or distribute such film unless he is registered as an exhibitor or distributor by the Board and issued with a certificate.

(2) No film or class of film shall be distributed, exhibited or broadcast, either publicly or privately, unless the Board has examined it and issued a certificate of approval in respect thereof:

Provided that this subsection shall not apply in respect of -

- (a) educational documentaries which are approved by the Kenya Institute of Education; or
- (b) films the use of which is restricted to the medical profession.

S.15 Delete and substitute therefor the following new section -

Functions of the Board. 15.(1) The functions of the Board shall be to -

(a) regulate the creation, broadcasting, possession, distribution and exhibition of films by –

(i) examining every film and every poster submitted under this Act for purposes of classification;

(ii) imposing age restriction on viewership;

(iii) giving consumer advice, having due regard to the protection of women and children against sexual exploitation or degradation in cinematograph films and on the internet.

(b) license and issue certificate to distributors and exhibitors of films;

(2) The Board may from time to time prescribe -

- (a) the procedure for application for licensing as a distributor or exhibitor of films; and
- (b) guidelines to be applied in the classification of films.

S.16(1)(d) Delete.

32.(1) Delete the words “two thousand” and “two months” and substitute therefor the words “one hundred thousand” and “five years” respectively.

35(2) Delete paragraph (g).

The Pest
Control
Products Act
(Cap.346)

S.2 Insert the following definitions in proper alphabetical sequence-

“adulteration” means addition of any substance or thing to a pest control product so as to change or alter its character, value, quality, composition, merit, efficacy and safety;

“counterfeiting” means manufacturing, formulating, producing or making of any pest control products, labels or packages that are identical or substantially indistinguishable from those legally authorized under this Act and are likely to cause confusion, mistake or

to deceive or pass off as being genuine pest control products, labels or package of the registrant of that particular product and “counterfeit goods” shall be construed accordingly;

New Insert the following new section immediately after section 4 –

Control of counterfeit products. 4A. Any person who adulterates or counterfeits or is found in possession of adulterated or counterfeit pest control products, labels or packages shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than two hundred and fifty thousand, and not exceeding one million Kenya shillings, or to imprisonment for a term not exceeding two years, or to both.

S.10 Delete subsection (3) and substitute therefor the following new subsection –

Forfeiture of pest control products. (3) A court convicting a person for an offence under this Act or any regulation made thereunder -

(a) may order that any pest control product in relation to which the offence was committed shall be forfeited to the state; and

(b) may make such order as it may deem proper as to the payment by the defendant of all or any fees and other expenses incidental to the analysis and disposal of a pest control product in respect of which the conviction is obtained.

S.11 Renumber the existing provision as subsection (1) and insert the following new subsection-

(2) No matter or thing done by a member of the Board or any officer, employee or agent of the Board shall, if it was done *bona fide* and without negligence for executing the functions, powers or duties of the Board, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever:

Provided that in the conduct of the affairs of the Board, members of the Board shall exercise due prudence and diligence.

S.12 Delete subsection (1) and substitute therefor the following new subsection -

(1) Any person who contravenes provisions of section 3 or 4 shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not

exceeding two years or to a fine not less than two hundred and fifty thousand shillings or to both.

New Insert the following new section immediately after section 12 -

General Penalty 12A Any person who is guilty of an offence under this Act for which no special penalty is provided by this Act shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a period not exceeding six months, or to both.

The Constitutional Offices (Remuneration) Act (Cap. 423) Schedule Delete and substitute therefor the following -

SCHEDULE (s.2)

<i>Office</i>	<i>Salary Scale or Rate</i>
Attorney-General	Band A 1
Chief Justice	Band A 1
Judge of Appeal	Band A 2
Puisne Judge	Band A 3
Controller & Auditor-General	Band A 2
Chairman, Public Service Commission	Band A 2

Deputy Chairman, Public Service Commission Band A 3

Member, Public Service Commission Band A 3

Chairman, Electoral Commission Band A 2

Vice-Chairman, Electoral Commission Band A 3

Member, Electoral Commission Band A 3

“Salary Scale Band A1” means a salary scale commencing at Ksh.399, 440 per month, increasing by 39, 940 per annum to Ksh. 439,380 per month; thereafter increasing by Ksh.43,140 per annum to Ksh. 482,520 per month; thereafter increasing by Ksh.49,140 per annum to Ksh.531,660 per month; thereafter increasing by Ksh.55,140 per annum to Ksh. 586,800 per month; thereafter increasing by Ksh. 61,140 per annum to Ksh.647, 940 per month thereafter increasing by Ksh.67, 140 to Ksh. 916, 500 per month.

“Salary Scale Band A2” means a salary scale commencing at Ksh.292,765 per month, increasing by Ksh. 19,320 per annum to Ksh. 312,085 per month; thereafter increasing by Ksh. 21,055 per annum to Ksh. 333,140 per month; thereafter increasing by Ksh.22,950 per annum to Ksh.356,090 per month; thereafter increasing by Ksh. 25,015 per annum to Ksh.406,120 per month; thereafter increasing by Ksh.30,000 per

annum to Ksh 436,120 per month; thereafter increasing by Ksh. 35,000 per annum to Ksh 576,120 per month.

“Salary Scale Band A3” means a salary scale commencing at Ksh.232,960 per month, increasing by Ksh. 13,930 per annum to Ksh.246,890 per month; thereafter increasing Ksh. 15,170 per annum to Ksh. 262,060 per month; thereafter increasing by Ksh. 16,575 per annum to Ksh.295,210 per month; thereafter increasing by Ksh.17,872 to Ksh.366,698 per month; thereafter increasing by Ksh.18,654 per annum to Ksh.441,314 per month; thereafter increasing by Ksh.20,002 per annum to Ksh. 481,318 per month.

The Stamp Duty Act (Cap. 480) S.2 Delete the definition of “stamp” and substitute therefore the following –

“stamp” means a stamp embossed by means of a die or a franking machine, or an adhesive stamp.

The Kenya Information and Communications Act. (No.2 of 1998) S.88 Delete

New Insert the following section immediately after section 46R.

Broadcasting
Content
Advisory
Council.

46S.(1) There is established a Council to be known as the Broadcasting Content Advisory Council, in this

section referred to as the
“Council.”

(2) The Council shall --

**(a) be responsible for and
make decisions on –**

(i) the administration
of the broadcasting
content aspects
and provisions in
the Act;

(ii) the mechanisms
for handling
complaints under
the Act;

(b) monitor compliance
with broadcasting
codes and ethics for
broadcasters; **and**

**(c) have such other
functions and
powers as the Board
may determine.**

**(3) The Council shall
consist of -**

**(a) the Permanent
Secretary in the
Ministry responsible
for information and
communications, or
his representative;**

**(b) six other members
appointed by the**

Minister as follows -

- (i) two members nominated by the Commission, one of whom shall be recommended by the Inter-Religious Forum;**
- (ii) two members appointed by the Media Council of Kenya established under the Media Act, 2007;**
- (iii) one member nominated by the Law Society of Kenya; and**
- (iv) one member, not being a civil servant, nominated by the Attorney-General.**

(4) The members shall at their first meeting elect one of their number to be the Chairman.

(5) In nominating members of the Council under sub-section (3), the nominating body or

authority shall **nominate**
persons who-

- (a) have knowledge and experience in media matters, broadcasting, communication or cultural issues;
- (b) **it is** satisfied do not have a conflict of interest under Part IVA and **have no** financial or other interest likely to prejudicially affect the carrying out of their functions under this Part; and
- (c) are, in the opinion of the **nominating body or authority**, suitable to perform the functions and duties of a member competently and honestly.

S.102(1) Insert the words “and such matters as may be referred to it by the Minister” immediately after the words “this Act”;

Delete the word “four” appearing in paragraph (b) and substitute therefor the word “two”.

Insert the following new paragraph –

(c) two other members who shall be nominated by the Media Council established under the Media Act, 2007, and appointed by the Minister.

No.3 of
2007

The Sexual offences Act No. 3 of 2006	S.2	Delete the definition of “indecent act” and substitute therefor the following-
		“indecent act” means an unlawful intentional act which causes any contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but does not include an act that causes penetration.
	S.10	Insert the words “or gang defilement” immediately after the words “gang rape” wherever they occur.
	S.12	Insert the following new paragraph immediately after paragraph (b)-
		(c) knowingly displays, shows, exposes or exhibits obscene images, words or sounds by means of print, audio visual or any other media to a child with the intention of encouraging or enabling the child to engage in sexual act,
		Delete the marginal note and substitute therefor the following –
		“Exposing a child to pornography”.
The Energy Act (No.12 of 2006)	S.57(2)	Delete the word “provided” appearing at the end thereof and substitute therefor the word “given”.
		Insert the following proviso:
		Provided that the licensee may, in its discretion, allow an applicant under this section to pay the costs of installation

of the supply in instalments over such period and on such terms and conditions as may be agreed upon between the licensee and such person.

S.61(1) Insert the following words immediately before the word “charges”-

“to the licensee any costs of installation or instalments thereof payable under section 57(2), or”

Delete the word “and” appearing at the end of subparagraph (i) of the provision.

Delete subparagraph (ii) of the provision.

**The HIV and
AIDS Prevention
and Control Act
(No.14 of 2006)**

s.2 **Insert the following definition in proper alphabetical sequence –**

“guardian” means, in relation to a child or a person with disability, any person having custody of such child or person with disability by reason of the death, illness, absence or for any other cause.

s.14(1) **Delete the word “legal” appearing in paragraph (c) (i).**

s.18 **Delete the word “legal” appearing in paragraph (c) (i).**

s.20(1) **Delete the word “shall” and substitute therefore the word “may”.**

s.22(1) **Delete the word “legal” appearing in paragraph (e) (i)**

s.24(7) **Insert the words “or person approved by the Minister”**

immediately after the words “medical practitioners.”

The Media Act, No.3 of 2007.	s.18	Insert the following paragraph immediately after paragraph (h) - (i) such monies as may be appropriated by Parliament for the purposes of the Council.
	s.22	Insert the following new paragraph immediately after paragraph (c). (d) Where public funds have been given, the accounts of the Council shall be examined, audited and reported upon annually by the Controller and Auditor-General in accordance with the Public Audit Act.
The Tobacco Control Act (No.8 of 2007)	S.14(3)	Delete.
	S.34	Insert the following new subsection immediately after subsection (5) - (6) A manager or owner of a prohibited smoking area who fails to display the smoking prohibition warning as prescribed in this subsections (1) and (2) commits an offence and shall be liable on conviction to a fine not exceeding one hundred and fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both.
The Supplies Practitioners Management Act (No.17 of 2007)	S.2.	Delete the expression “3” in the definition of the term “Council” and substitute therefor the expression “4”; Delete the expression “4” in the

definition of the term “Institute” and substitute therefor the expression “3”;

Delete the definition of “Supplies Practitioner” and substitute therefor the following new definition-

“supplies practitioner” means a person registered as a supplies practitioner under section 16.

New Insert the following new sections immediately after section 3 -

Membership of the Institute. **3A(1)** A person who is registered under this Act is a member of the Institute.

(2) The members of the Institute shall be in the following categories—

(a) Fellows, comprising those persons who become Fellows pursuant to an invitation under subsection (3) each of whom shall be titled “Fellow of the Kenya Institute of Supplies Management”; (designatory letters F.K.I.S.M);

(b) members, comprising those members of the

Institute who are registered under section 16, each of whom shall be titled “Member of the Kenya Institute of Supplies Management.” (designatory letters M.K.I.S.M);

(c) associate members, comprising persons eligible to be registered under section 16 but who do not meet all the requirements prescribed under subsection (1) of that section;

(3) Where the Council considers that a member of the Institute has rendered outstanding services to the supplies profession, the Council may invite the member to become a Fellow.

(4) Members of the Institute shall pay such fees and subscriptions as the Council may determine.

Honorary
Fellows.

3B(1) Where the Council considers that a person, not being a member of the Institute,

has rendered exceptional services to the Institute or the Procurement and Supplies Management profession, the Council may invite the person to become an Honorary Fellow of the Institute.

(2) An Honorary Fellow shall not be a member of the Institute.

S.4 Delete subsection (1) and substitute therefor the following new sub-section—

(1) The Institute shall be governed by a Council to be known as the Council of the Institute.

(a) a chairman, who shall be a member of the Institute with at least five years experience, elected by the members of the Institute;

(b) the Permanent Secretary in the Ministry responsible for Finance;

(c) the Director-General of the Public Procurement Oversight Authority; and

(d) six other members elected by members of the Institute.

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

(1A) The Chairman and the other

- members of the Council referred to in paragraph (d) shall be elected by the members of the Institute specified in section 3A(2)(a) and (b) in the manner prescribed by regulations.
- 4(2) Delete the expression “subsection (1)” and substitute therefor the expression “subsection (1)(b)”.
- S.8 Delete the words “may be determined at the annual general meeting” and substitute therefor the words “the Minister may approve”.
- New Insert the following new subsection immediately after subsection (1)–
- (1A)** The Examinations Board shall be a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of–
- (a) suing and being sued;
- (b) purchasing, acquiring, holding or disposing of property;
- (c) doing or performing all such other acts necessary for the proper performance of its functions under this Act.
- S.12(2) Delete the word “Board” wherever it occurs and substitute therefor the words “Examinations Board”
- S.12(2)(a) Insert the words “from amongst the members of the Institute” immediately

after the word “Council” appearing in the second line;

S.12(3) Delete the expression in “(2)(b)” and substitute therefor the expression “(2)(a);”.

Delete the word “Board” and substitute therefor the word “Council”.

S.13 Delete the word “Committee” appearing in the marginal note and substitute therefor the word “Board”.

S.15(1) Delete the words “which shall be a committee of the Council”.

S.15(2) (b) Delete paragraphs (a) and (b) and substitute therefor the following new paragraphs—

(a) a Chairperson who shall be appointed by the Council from amongst members of the Council;

(b) two persons who shall be qualified supplies practitioners appointed by the Council from amongst the members of the Institute.

S.19 Renumber subsection (1) as (1A)

Insert the following new subsection-

(1) The Registrar shall cause to be kept a register of the members of the Institute.

The Truth Justice and Reconciliation Act, 2008 (No. 6 of 2008)	s.9 (2)	Delete and substitute therefor the following new subsection- (2) The function of the selection panel shall be to nominate persons for appointment as commissioners in accordance with the First Schedule.
	s.10 (2)	Delete the words “for nomination by” and substitute therefor the words “and forwarded to”;
	s.10 (5)	Delete the word “seven” and substitute therefor the word “nine”. Delete the word “three” appearing in paragraph (a) and substitute therefor the word “four”. Delete the word “four” appearing in paragraph (b) and substitute therefor the word “five”.
	s.19	Place a full stop immediately after the words “as the chairperson” and delete the rest of the section.
	s.34	Delete the marginal note and substitute therefor the following- “No amnesty for international law crimes”.
	s. 34(2)	Place a full-stop immediately after the words “any law in Kenya” and delete the rest of the subsection.
	s. 34(3)	Insert the words “genocide, crimes against humanity” immediately after

		the words “in respect of”.
	s.38(4)	Delete the word “grant” and substitute therefor the word “recommend”.
	First Schedule Para 5	Delete the words “nine persons” and substitute therefor the words “six persons”; Delete the words “the list of nominees” and substitute therefor the words “the names of the six nominees together with those of the three nominees forwarded by the Panel of Eminent African Personalities”.
The Constitution of Kenya Review Act 2008 (No.9 of 2009)	s.2	Insert the following new definitions in proper alphabetical sequence- “core functions” means the activities of the Committee of Experts from the date of appointment to the last day of civic education under section 35.
	s.13(3)	Delete.
	S.14(1)	Insert the words “in contravention of the Public Officer Ethics Act, 2003 immediately after the word “misconduct.”
	S.15(1)	Delete paragraph (a) and substitute therefor the following new paragraph- (a) where the vacancy is in respect of a citizen of Kenya, the Parliamentary Select Committee shall, within

twenty-one days of the notification under section 13(2), submit to the President through the Minister the name of a person qualified under this Act and nominated by that Committee to fill the vacancy.

- S.28(1) Delete the words “from the date of the commencement of this Act” and substitute therefor the words “from the date of its appointment”.

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

(2) For the purposes of this section “work” means the core functions within the meaning of section 2.

- S. 33(1) Delete and substitute therefor the following new subsection-

(1) The Parliamentary Select Committee shall, within twenty-one days, resubmit the draft Constitution and report presented to it under section 32(c) to the Committee of Experts with the recommendations agreed upon as a result of its deliberations, and the Committee of Experts shall revise the draft Constitution taking into account the achieved consensus.

- S.33(4) Delete the word “fifteen and substitute therefor the word “thirty”.

- S.33(8) Delete the word “fourteen” and substitute therefor the word “seven”.

- S.33(10) Insert the words “within twenty-one days” immediately after the words “the National Assembly shall”.
- S.34(3) Delete the words “Electoral Commission” and substitute therefor the words “Interim Independent Electoral Commission”.
- S.37(1) Delete the words “Electoral Commission” and substitute therefor the words “Interim Independent Electoral Commission”.
- S.38 Delete the words “Electoral Commission” and substitute therefor the words “interim Electoral Commission”.
- S.39 Delete the words “Electoral Commission” whenever they occur and substitute therefor the words “Interim Independent Electoral Commission”.
- S.43(1) Delete the words “Electoral Commission” and substitute therefor the words “Interim Independent Electoral Commission”.

Insert the following new subsection immediately after subsection (3) -

(4) The Interim Independent Electoral Commission shall, consequent upon the results of the referendum becoming final, by notice in the Gazette confirm the results as the final results of the referendum.

- New Insert the following new section
Immediately after section 43-

Proclamation
of new
Constitution. **43A.** The President shall
by notice in the Gazette
promulgate the new
Constitution not later than
fourteen days after the
publication of the final
result of the referendum.

S.44(1) Delete the expression “High Court” and
substitute therefor the words “the
Interim Independent Constitutional
Dispute Resolution Court established by
section 60A of the Constitution”

S.44(2) Delete the words “Electoral
Commission” and substitute therefor the
words “Interim Independent Electoral
Commission’.

S.45(1) Delete and substitute therefore the
following new section -

Composition
and
operations of
Court. **45(1).** The judges of the
**Interim Independent
Constitutional Court**
shall elect one of their
number to be the
**Presiding Judge of the
Court.**

**(2) The Court may
engage such staff as may
be necessary for the
performance of its
functions and may in its
absolute discretion
request for secondment
of staff from the
Judiciary or other
sections of the Public
Service.**

(3) The Court shall regulate its own procedure.

(4) Without prejudice to subsection (3), the Court shall enjoy the status of the High Court of Kenya, and in this regard, the rules of practice and procedure applicable to the High Court shall apply to the Court subject to necessary modification provided.

(5) A petition under section 44 shall be determined by a panel of five judges appointed by the Presiding Judge.

(6) Unless otherwise ordered by the Presiding Judge, interlocutory matters shall be dealt with by a single judge from the panel.

S.46(1)(c) Delete the words “electoral Commission” and substitute therefor the words “Interim Independent Electoral Commission”.

S.58(3) Delete the words “Electoral Commission” and substitute therefor the words “Interim Independent Electoral Commission”.

New Insert the following new Schedule immediately after the Third Schedule-

FOURTH SCHEDULE (s.31)

**Organizations to Choose
Representatives to the Reference
Group**

Religious Sector

1. Supreme Council of Kenya Muslim (SUPKEM)
2. National Council of Churches of Kenya (NCKK)
3. Kenya Episcopal Conference (KEC)
4. Evangelical Alliance of Kenya (EAK)
5. Hindu Council of Kenya (HCK)
6. Seventy Day Adventist (SDA)
7. Organization of Africa Instituted Churches (OAIC)
8. National Muslim Leadership Forum (NAMLEF)
9. African Independent Pentecostal Church of Africa (AIPCA)

Women Organizations

10. Maendeleo ya Wanawake Organization (MYWO)
11. National Council of Women of Kenya (NCWK)

12. Federation of Women Lawyers (FIDA)

Private Sector

13. Central Organization of Trade Unions (COTU)
14. Kenya Private Sector Alliance (KEPSA)
15. Kenya National Union of Teachers (KNUT)
16. Federation of Kenya Employees (FKE)

Professional Groups

17. Association of Professional Societies in East Africa (APSEA)
18. Law Society of Kenya (LSK)
19. Kenya Magistrate and Judges Association (KMJA)
20. Kenya Medical Association (KMA)

Special Interests

21. United Disabled Persons of Kenya (UDPK)
22. Kenya Alliance for the Advancement of the Right of the Child (KAARC)
23. The Cradle – The Children’s Foundation
24. Kenya Society for the Blind

Civil Society

25. NGO Council
26. National Convention Executive Council (NCEC)
27. Youth Agenda
28. Kenya Human Rights Commission

Others

29. Media Council of Kenya
30. Association of Local Government Authorities of Kenya.

MEMORANDUM OF OBJECTS AND REASONS

This Bill is published in keeping with the tradition of taking minor amendments which do not merit the publication of separate Bills and consolidating them into one miscellaneous amendments Bill.

The Bill seeks to make amendments to the following statutes:

The Interpretation and General Provisions Act (Cap. 2)

The Bill seeks to amend the Interpretation and General Provisions Act to provide a more comprehensive interpretation of written laws with regard to ministers and other officials following the reorganization of Government.

The Appellate Jurisdiction Act (Cap.9)

The Bill proposes to amend the Appellate Jurisdiction Act to set out the overriding objective of the Court of Appeal and also the principles of efficient case management.

The Advocates Act (Cap. 16)

The Bill seeks to amend the Advocates Act, to provide for the procedure for the granting of the rank of Senior Counsel.

The Civil Procedure Act (Cap.21)

The Bill seeks to amend the Civil Procedure Act to set out the overriding principles of the High Court; it also proposes to introduce new provisions on alternative dispute resolution.

The Films and Stage Plays Act (Cap.222)

The Bill seeks to amend the Films and Stage Plays to establish and assign powers and functions to the Kenya Film Classification Board and to enhance penalties under the Act.

The Pest Control Products Act (Cap. 346)

The Bill seeks to amend the Pest Control Products Act to make provisions against adulteration and counterfeiting of pest control products, and to enhance the penalties for contravention of the Act.

The Constitutional Offices (Remuneration) Act (Cap. 423)

The Bill seeks to amend the Constitutional Offices (Remuneration) Act to enhance the salaries of Constitutional Office holders to reflect the economic situation.

The Stamp Duty Act (Cap. 480)

The Bill seeks to amend the Stamp Duty Act to provide for the franking of documents.

The Kenya Information and Communications Act (No. 2 of 1998)

The Bill proposes to amend the Kenya Information and Communications Act to, among other things, establish and assign functions to a Broadcasting Content Advisory Council and also to enable the Media Council to appoint members to the Appeals Tribunal.

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

The Bill proposes to amend the Sexual Offences Act to clarify the definition of “indecent act” and to criminalize the exposure of children to obscene images or language with the intention of enabling the children to engage in sexual acts. It also proposes to include the offence of “gang defilement” along with gang rape.

The Energy Act, 2006 (No. 12 of 2006)

The Bill proposes to amend the Energy Act, 2006 to empower a licensee for the supply of electrical energy to allow a consumer to pay installation costs in installments.

The HIV and Aids Prevention and Control Act, 2006 (No.14 of 2006)

The Bill proposes to amend the HIV and Aids Prevention and Control Act, 2006, to ease the definition of “guardian” in relation to a child or a person with a disability. It also seeks to empower the Minister for Health to prescribe privacy guidelines with respect to HIV testing, and also to allow persons approved by the Minister for health to disclose a patient’s HIV status to the patients sexual contacts where the patient refuses to do so.

The Media Act, 2007 (No. 3 of 2007)

The Bill proposes to amend the Media Act, 2007, to provide for the funding of the Media Council by the Treasury.

The Tobacco Control Act (No. 8 of 2007)

The Bill seeks to amend the Tobacco Control Act to provide for penalties for managers of prohibited smoking areas who fail to display a smoking prohibition warning in their premises.

The Supplies Practitioners Management Act (No.17 of 2007)

The Bill seeks to amend the Supplies Practitioners Management Act, 2007 to clarify the provisions relating to the membership of the Institute of Supplies Practitioners and to provide for the establishment of a Council to manage it.

The Truth Justice and Reconciliation Act, 2008 (No.6 of 2008)

The Bill proposes to amend the Truth Justice and Reconciliation Act, 2008 to streamline the provisions of the Act regarding the process of removal of the chairman or members of the Truth Justice and Reconciliation Commission and also the appointment of non-citizen members of that Commission. It also seeks to amend section 34 to include “genocide” as a crime for which the Commission may not recommend amnesty.

The Constitution of Kenya Review Act (No. 10 of 2008)

The Bill seeks to amend the Constitution of Kenya Review Act, 2008 to set out the names of the interest groups which should provide members for the Reference Group to be set up to facilitate consultations on the draft Constitution prepared under that Act, and to harmonise its provisions with the Constitution of Kenya (Amendment) Act, 2008 (No.10 of 2008)

The enactment of this Bill will occasion additional expenditure of public funds which shall be provided for through the estimates.

Dated the....., 2009.

**S. A. WAKO,
Attorney-General.**

Section 17 of Cap. 16 which it is proposed to amend-

Senior Counsel. 17.(1) The President may grant a letter of conferment to any person of irreproachable professional conduct who has rendered exemplary service to the legal and public service in Kenya conferring upon him the rank and dignity of Senior Counsel

(2) A person shall not be eligible to be a Senior Counsel unless -

(b) he is duly enrolled advocate of the High Court of not less than fifteen years' standing; or

(c) being a person to whom section 10 applies, he holds, and has held for a continuous period of not less than fifteen years, one or other of the qualifications specified in section 13(1).

Section 18 of Cap.16 which it is proposed to amend –

Roll of Senior Counsel. 18.(1) Upon the commencement of this Act, the Registrar shall cause to be prepared, and shall thereafter maintain, a Roll of Advocates having the rank of the Senior Counsel (hereinafter called “the Roll of Senior Counsel”) in accordance with this Part and any directions as to its form and the information to be recorded as the Chief Justice may give, and shall allow any person to inspect the Roll during office hours without payment.

(2) There shall be entered in the Roll of Senior Counsel the names of all persons having the rank thereof in accordance with this Part.

(3) Every person upon whom the rank of Senior Counsel has been conferred shall sign the Roll of Senior Counsel in the presence of the Registrar, and the Registrar shall add his signature as a witness.

Section 81 (1) Cap.16 which it is proposed to amend –

Power to make Rules. 81.(1) The Council of the Society, with the approval of the Chief Justice, may make rules with regard to -

- (a) the professional practice, conduct and discipline of advocates;
- (b) the keeping of accounts by advocates;
- (c) the annual submission to the Council of a certificate by an accountant registered under the Accountants Act or by some other person or class of persons specified by such Council that he has examined the books, accounts and documents of the advocate to such extent as may be prescribed and stating –
 - (i) whether or not he is satisfied that, during the period covered by his certificate, the advocate has complied with the rules for the time being in force regulating the keeping of accounts by advocates; and
- (d) the retention or otherwise by otherwise by advocates of interest earned on moneys deposited, received or held for or on account of clients;
- (e) the issue of practicing certificates, the fee payable thereon and the duties of the Registrar with respect to the issuing of such certificates;
- (f) the establishment of a compensation fund for the benefit of clients;
- (g) indemnity for clients against loss or damage arising from claims in respect of any civil liability incurred by an advocate or his employee, or from breach of trust by the advocate or his employee;
- (h) continuing professional education for all advocates practicing in Kenya.
- (i) generally for the better carrying out of the provisions of this Act, other than Parts III, IV, IX X and XI.

Section 2 of Cap.122 which it is proposed to amend –

Interpretation.

2. In this Act, unless the context otherwise requires

“admitted” means admitted whether on payment or gratuitously;

“Board” means the Board of Censors established by section 11;

“certificate of approval” means a certificate issued by the Board under section 16;

“child” means a person who has attained the age of four years but has not attained the age of eighteen years;

“cinema” (deleted by No. 5 of 2007, s.7);

“exhibit” means give or make, or cause or permit to be given or made, or take part or assist in the giving or making of any exhibition;

“exhibition” means the projection of a film or other optical effect by means of a cinematograph or similar apparatus;

“film” means a cinematographic film, recorded video cassette film, recorded video disc, any recorded audiovisual medium, and includes any commentary (wherever spoken and whether the person speaking appears in the film or not), and any music or other sound effect, associated with the film, and any part of a film;

“licensing authority” (deleted by No. 5 of 2007, s.7);

“licensing officer” (deleted by No. 5 of 2007,s.7);

“making of a film” means the acts of photographing, performing or otherwise taking part in or arranging any scenes or episodes for the purpose of the production of a film and includes the recording of a film on a video cassette, video disc or other audiovisual medium;

“poster” means any poster or other advertisement advertising a film or exhibition;

“public exhibition” and “public performance” mean respectively an exhibition and a performance to which the public are admitted, whether on payment or gratuitously;

“stage play” includes tragedy, comedy, farce, opera, burletta, interlude, melodrama, revue, pantomime, dialogue, prologue, epilogue and every other dramatic entertainment, and any part thereof;

“stage plays licensing authority” means a licensing authority appointed under section 19.

Section 11 of Cap. 222 which it is proposed to amend-

Board of Censors. 11.(1) There is hereby established a Board of Censors, which shall perform the duties prescribed by section 15 and the other duties imposed on it by this Part.

Section 12 of Cap. 222 which it is proposed to amend –

Restriction on exhibition. 12.(1) No person shall exhibit any film at an exhibition to which the public are admitted unless the Board has issued a certificate of approval in respect thereof approving it for exhibition.

(2) Where the Minister is of opinion that any film, or any class of film, should not be exhibited at all (neither publicly nor privately) without a certificate of approval having been issued in respect thereof, he may, by notice served personally or by registered post on any person who appears to him to be likely to exhibit the film, or a film of that class, or by notice in the Gazette, require that the film, or class of film, shall not be exhibited at all, neither publicly nor privately, unless the Board has issued a certificate of approval in respect thereof, and thereafter the person who has been given notice shall not, or, where notice has been given in the Gazette, no person shall, exhibit the film, or any film of that class, at any exhibition whatever unless the Board has issued a certificate of approval in respect thereof, nor otherwise than in accordance with its terms and conditions.

(3) Any person who exhibits any film in contravention of

the provisions of subsection (1) or subsection (2) shall be guilty of an offence.

Section 15 of Cap.222 which it is proposed to amend-

Duty of Board. 15. The Board shall examine every film, and every poster or description thereof, submitted to it under this Act, with a view to deciding whether, and if so in what manner, it should be approved for exhibition unless, notwithstanding the provisions of section 16, the Board decides to approve a film or poster for exhibition to the public without having examined it.

Section 16(1) of Cap.222 which it is proposed to amend –

Certificate of approval. 16.(1) Subject to the provisions of section 17, on completion of the examination of a film, the Board may -

- (a) approve it for exhibition to the public; or
- (b) approve it for exhibition to the public subject to such excisions as it thinks proper; or
- (c) refuse to approve it for exhibition to the public; or
- (d) where the film is the subject of a notice under subsection (2) of section 12 -
 - (i) approve it for exhibition by such persons to such persons or in such places as the Board thinks proper; or
 - (ii) refuse to approve its exhibition.

Section 32(1) of Cap.222 which it is proposed to amend-

Penalties. 32.(1) Any person who is guilty of an offence under this Act shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months or to both such fine and equipment.

Section 35 of Cap.222 which it is proposed to amend-

Regulations. 35.(1) The Minister may make regulations prescribing anything which under this Act may be prescribed, and generally for the better carrying into effect of the provisions and purposes of this Act.

(2) Without prejudice to the generality of subsection (1), regulations under this section may provide for -

- (a) prescribing fees for anything to be done under this Act, generally or in respect of specified areas, and, for the purpose of prescribing fees, licences may be divided into different classes and a different fee prescribed for each such class;
- (b) prescribing charges for, or for matters incidental to, the attendance of police officers and other persons at the making of films under section 7;
- (c) prescribing the procedure for appeals to the Minister under this Act;
- (d) (deleted by No. 5 of 2007, s.14);
- (e) prescribing the conditions to be observed in regard to the erection, alteration and equipment of any theatre or cinema in the Nairobi Area;
- (f) prescribing the conditions to be observed in regard to securing the safety of theatres and cinemas from fire or other danger, or the safety and control of persons attending at theatres and cinemas in the Nairobi Area;

- (g) prescribing the constitution and duties of the Board of Censors established under section 11.

Section 2 of Cap.346 which it is proposed to amend-

Interpretation.

2. In this Act, unless the context otherwise requires -

“advertise” includes any representation by any means whatever for the purpose of promoting directly or indirectly the sale or disposal of any pest control product;

“Board” means the Pest Control Products established under section 5;

“inspector” means a person appointed as an inspector under section 8;

“label” includes a legend, word, mark, symbol, pictogram or design applied or attached to, included in, belonging to or accompanying any pest control product;

“package” includes any container, wrapping, covering or holder in which any pest control product or material is wholly or partly contained, placed or packed;

“pest” means any injurious, noxious or troublesome insect, fungus, bacterial organism, virus, weed, rodent or other plant or animal pest; and includes any injurious, noxious or troublesome organic function of a plant or animal;

“pest control product” means a product, device, organism, substance or thing that is manufactured, represented, sold or used as a means for directly or indirectly controlling, preventing, destroying, attracting or repelling any pest and includes -

- (a) any compound or substance that enhances or modifies or is intended to enhance or modify the physical or chemical characteristics of a pest control product to which it is added; and

- (b) any active ingredient used for the manufacture of a pest control product;

“place” includes any vehicle, vessel, railway carriage or aircraft;

“sell” includes offer, advertise, keep, expose, transmit, convey, deliver and prepare for sale or exchange, and dispose of for any consideration whatsoever.

Section 10 of Cap.346 which it is proposed to amend-

Seizure and disposal of pest control products.

10.(1) Whenever an inspector believes, on reasonable grounds, that this Act or any regulations made thereunder has or have been contravened, he may seize and detain the pest control product by means of or in relation to which he reasonably believes the contravention was committed.

(2) Any pest control product seized and detained pursuant to subsection (1) shall not be detained after -

- (a) such time not exceeding fourteen days as, in the opinion of the inspector, the provisions of this Act and the regulations made thereunder have been complied with; or
- (b) the expiration of six months from the date of seizure, or such longer period as may be prescribed with respect to any pest control product,

Unless before that time proceedings have been instituted in respect of the contravention, in which case the pest control product may be detained until the proceedings are finally concluded.

(3) A court convicting any person for an offence under this Act or any regulations made thereunder may make such order as the court shall deem proper as to-

- (a) the forfeiture or disposal of any pest control product; and
- (b) the payment by the defendant of all or any fees

and other expenses incidental to the analysis of a pest control product,

in respect of which the conviction is obtained.

(4) Where an inspector has seized a pest control product and the owner thereof or the person in whose possession the pest control product was at the time of the seizure consents in writing to the disposal thereof, the pest control product shall thereupon be forfeited to the Government and shall be disposed of in such manner as the Minister may direct and at the expense of the person consenting to the disposal.

(5) Any person who hinders or obstructs an inspector acting in exercise of his powers under this section shall be guilty of an offence.

Section 11 of Cap.346 which it is proposed to amend –

Secrecy of information.

11. Any person who is or has been engaged in the enforcement of the provisions of this Act who discloses, except for the purpose of the exercise of his functions or when required to do so by a court or under any written law, any information acquired by him in the exercise or purported exercise of his functions under this Act to any other person shall be guilty of an offence.

Section 12 of Cap.346 which it is proposed to amend-

Offences and penalties.

12.(1) Any person who contravenes the provisions of section 3 or 4 shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years.

(2) A person guilty of an offence under this Act other than an offence referred to in subsection (1) shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

(3) In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or

not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

Schedule to Cap.423 which it is proposed to amend –

SCHEDULE

SALARY SCALES

SCHEDULE	(s.2)
<i>Office</i>	<i>Salary Scale or Rate</i>
Attorney-General	Band A 1
Chief Justice	Band A 1
Judge of Appeal	Band A 2
Puisne Judge	Band A 3
Controller & Auditor-General	Band A 2
Chairman, Public Service Commission	Band A 2
Deputy Chairman, Public Service Commission	Band A 3
Member, Public Service Commission	Band A 3
Chairman, Electoral Commission	Band A 2
Vice-Chairman,	Band A 3

Electoral Commission

Member, Electoral Commission Band A 3

In this Schedule –

“Salary Scale Band A1” means a salary scale commencing at Kshs.300105 per month increasing by Kshs.30010 per annum to Kshs.330115 per month;

thereafter increasing by Kshs.33010 per annum to Kshs. 363125 per month;
thereafter increasing by Kshs.36310 per annum to Kshs. 399435 per month;
thereafter increasing by Kshs.39945 per annum to Kshs. 439380 per month;
thereafter increasing by Kshs.43940 per annum to Kshs. 483320 per month;
thereafter increasing by Kshs.48330 per annum to Kshs. 531650 per month;

“Salary Scale Band A2” means a salary scale commencing at Kshs. 180655 per month, increasing by Kshs.16260 per annum to Kshs.196915 per month;
thereafter increasing by Kshs.17720 per annum to Kshs. 214635 per month;
thereafter increasing by Kshs.19320per annum to Kshs. 233955 per month;
thereafter increasing by Kshs.21055 per annum to Kshs. 255010 per month;
thereafter increasing by Kshs.22950per annum to Kshs. 277960 per month;
thereafter increasing by two annual increments of Kshs.25015 each to 327990 per month;
thereafter increasing by Kshs.30000 per annum to Kshs. 357990 per month;
thereafter increasing by two annual increments of Kshs.35000 each to 427990 per month;

“Salary Scale Band A3” means a salary scale commencing at Kshs. 130315 per month, increasing by Kshs.11730 per annum to Kshs.142045 per month; thereafter increasing by Kshs.12785 per annum to Kshs. 154830 per month; thereafter increasing by Kshs.13930 per annum to Kshs. 168760 per month; thereafter increasing by Kshs.15190 per annum to Kshs. 183950 per month; thereafter increasing by Kshs.16555 per annum to Kshs. 200505 per month; thereafter increasing by Kshs.2435 per annum to Kshs. 217070 per month; thereafter increasing by Kshs.14130 per annum to Kshs. 214635 per month; thereafter increasing by two annual increments of Kshs.17500 each to Kshs. 252070 per month; thereafter increasing by two annual increments of Kshs.18250 each to Kshs. 306820 per month; thereafter increasing by Kshs.18430 per annum to Kshs. 325250 per month; thereafter increasing by Kshs.18070 per annum to Kshs. 343320 per month;

Section 2 of Act No. 3 of 2006 which it is proposed to amend –

Interpretation. 2.(1) In this Act, unless the context otherwise requires -

 “act which causes penetration” means an act contemplated under this Act;

No.8 of 2001. “child” has the meaning assigned thereto in the Children Act;

 “complainant” means the Republic or the alleged victim of a sexual offence and in the case of a child or a person with mental disabilities, includes a person who lodges a complaint on behalf of the alleged victim where the victim is unable or inhibited from lodging and following up a complaint of sexual abuse;

“consent” has the meaning assigned to it under this Act;

“DNA” means deoxyribonucleic acid, the genetic code unique to every living organism, including human beings and “DNA Test” shall be construed accordingly;

“genital organs” includes the whole or part of male or female genital organs and for purposes of this Act includes the anus;

“gang rape” has the meaning assigned to it under section 10 of this Act;

“HIV” means the Human Immunodeficiency Virus which causes AIDS;

“HIV test” means the test which determines whether a person is infected with HIV;

“indecent act” means any intentional act which causes -

- (a) any contact between the genital organs of a person, his or her breasts and buttocks with that of another person;
- (b) exposure or display of any pornographic material to any person against his or her will, but does not include an act which causes penetration;

“intermediary” means a person authorized by a court, on account of his or her expertise or experience, to give evidence on behalf of a vulnerable witness and may include a parent, relative, psychologist, counselor, guardian, children’s officer or social worker;

“law enforcement officer” means any person whose duties involve law enforcement and includes but is not limited to a police officer as defined under the Police Act;

“person with mental disabilities” means a person affected by any mental disability irrespective of its cause, whether temporary or permanent, and for purposes of this Act includes a person affected by such mental disability to the extent that he or she, at the time of the alleged commission of

the offence in question, was -

- (a) unable to appreciate the nature and reasonably foreseeable consequences of any act described under this Act;
- (b) able to appreciate the nature and reasonably foreseeable consequences of such an act but unable to act in accordance with that appreciation;
- (c) unable to resist the commission of any such act; or
- (d) unable to communicate his or her unwillingness to participate in any such act;

“Minister” means the Minister for the time being responsible for matters relating to legal affairs and public prosecutions;

“penetration” means the partial or complete insertion of the genital organs of a person into the genital organs of another person;

“sexual offence” means any offence prescribed in this Act; and

“vulnerable person” means a child, a person with mental disabilities or an elderly person and “vulnerable witness” shall be construed accordingly.

Section 12 of Act No.3 of 2006 which it is proposed to amend-

Promotion of sexual offences with a child.

12. A person including a juristic person who -
- (a) manufactures or distributes any article that promotes or is intended to promote a sexual offence with a child; or
 - (b) who supplies or displays to a child any article which is intended to be used in the performance of a sexual act with the intention of encouraging or enabling that child to

perform such sexual act,

is guilty of an offence and is liable upon conviction to imprisonment for a term of not less than five years and where the accused person is juristic person to a fine of not less than five hundred thousand shillings.

Section 2 of Cap.480 which it is proposed to amend –

Interpretation. 2. In this Act, except where the context otherwise requires -

“collector” means the Senior Collector of Stamp Duties and every Collector of Stamp Duties appointed under section4;

“consideration” or “valuable consideration” includes valuable consideration in money or money’s worth, marriage and natural love and affection;

“duty” and “stamp duty” mean any stamp duty for the time being chargeable by any written law;

“executed” and “execution”, with reference instruments not under seal, mean signed and signature;

“instrument” includes document;

“marketable security” includes a security of such a description as to be capable of being sold on any stock exchange;

“material” includes every sort of material on which words and figures can be expressed;

“money” includes all sums expressed in Kenya currency or in the currency of any country;

“stamp” means a stamp embossed or impressed by means of a die or adhesive stamp;

“stamped” and duly stamped” means that the instrument

referred to is stamped with the required and sufficient stamp and that the stamp has been cancelled, if necessary, in accordance with the provisions of this Act;

“stock” includes any share in the stocks transferable at the Bank of England, and any share in the stocks or funds of the government of any country in the Commonwealth or of any foreign country, or in the capital stock or funded debt of any local authority, corporation, company or society in Kenya or in any country in the Commonwealth or of any foreign corporation, company or society.

Section 14 of Act No. 8 of 2007 which it is proposed to amend –

Conformity with requirements. 14.(1) No person shall manufacture, import or distribute a tobacco product that does not conform to the requirements of this Act or any regulations made there under.

(2) Every, packet or packages of tobacco for retail or wholesale in Kenya shall carry the statement “Sales only allowed in Kenya “ and shall also state the country of origin.

(3) Every packet or package of tobacco for export from Kenya shall bear the statement “for export only”.

(4) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.

Section 34 of Act No. 8 of 2007 which it is proposed to amend –

Display of notices. 34.(1) The manager or owner of a prohibited smoking area shall cause to be displayed therein, clear and prominent notices in both English and Kiswahili, stating that smoking is prohibited and the prescribed penalty therefore.

(2) Every notice under subsection (1) shall be in such form and of such size, and shall be posted in such place, as may be prescribed.

(3) A manager or owner of any prohibited smoking area may order any person who smokes within the area or

within the immediate vicinity of the entrance to the area to cease smoking forthwith, indicating the penalty therefore and may require any person failing, refusing or neglecting to comply with such order to leave the area.

(4) A person who hinders, obstructs, threatens or abuses or assaults a manager or owner of a prohibited smoking area in the execution of the powers conferred by this section committed failing, refusing or neglecting to comply with such manager or by a police officer or other authorized officer.

(5) A person who commits an offence under subsection (4) shall, on conviction, be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

Section 2 of Act No. 17 of 2007 which it is proposed to amend –

Interpretation.

2. In this Act unless the context otherwise requires -

“approved training institution” means such institution within or outside Kenya as may be approved by the Institute by notice;

“Council” means the Council constituted under section 3 of this Act;

“Disciplinary Committee” means the disciplinary committee established under section 22 of the Act;

“Institute” means the Kenya Institute of Supplies Management established under section 22 of the Act;

“Minister” means the Minister for the time being responsible for matters relating to finance;

“member of the Institute” means a member of the Institute registered under section 16 of the Act;

“supplies practitioner” means a person or procuring agent engaged in public or private sector procurement, purchasing, stores management, logistics, supply chain or related activities who is for the time being registered and/or licensed under section 16 of this Act as a supplies practitioner which

No. 3 of 2005. reference shall include “procurement professional” provided in section 26(7), (8), (9) and (10) of the Public Procurement and Disposal Act, 2005.

Section 4 of Act No. 17 of 2007 which it is proposed to amend –

Composition of Council. 4.(1) The Institute shall be managed by a council consisting of -

- (a) a chairman who shall be a qualified supplies practitioner with at least five years experience in supplies, elected by the members of the Institute in the manner prescribed in the regulations;
- (b) six other members elected by the supplies practitioners in the manner prescribed in the regulations;
- (c) the Director-General of the Public Procurement Oversight Authority.

(2) The chairman and every member appointed under subsection (1) shall hold office for a term of three years and shall be eligible for re-election for one further term of three years.

(3) All appointments under this section shall be notified in the Kenya Gazette.

Section 8 of Act No. 17 of 2007 which it is proposed to amend –

Remuneration of Council members. 8. The Institute shall pay to its Council members such remuneration, or allowances for expenses as may be determined at the annual general meeting.

Section 12 of Act No. 17 of 2007 which it is proposed to amend –

Examination committee. 12.(1) There is hereby established a Board to be known as the Kenya Institute of Supplies Examination Board, which shall be a body corporate.

- (2) The Board shall consist of -
- (a) five persons who shall be qualified supplies practitioners, nominated by the Council, one of whom shall be appointed by the Council as Chairperson of the Board.
 - (b) two persons nominated by the Minister responsible for education, one of whom shall be from the Kenya Institute of Education and the other from the Kenya National Examination Council;
 - (c) one person nominated by the Commission for Higher Education;
 - (d) one person nominated by the Director-General of the Public Procurement Oversight Authority;
 - (e) one person nominated by the Local universities; and
 - (f) one person nominated by the Kenya Private Sector Alliance.

(3) In nominating the persons under subsection (2) (b), the Board shall have regard to gender balance.

Section 13 of Act No.17 of 2007 which it is proposed to amend –

13. The Examinations Board shall generally have regard to the conduct of examinations for professional supplies certification and in particular to -

- (a) prescribe and regulate syllabuses of instruction for professional supplies certification for persons seeking registration under the Act;
- (b) prepare and conduct examinations for persons seeking registration under the Act;
- (c) prepare regulations to be made by the Institute regarding the standard of proficiency to be gained in each examination for a diploma, degree or other

award; and

- (d) make rules with respect to such examinations;
- (e) prescribe the fees and other charges payable with respect to such examinations;
- (f) issue professional qualifying certificates and other awards to candidates who have satisfied the examination requirements;
- (g) investigate and determine cases involving indiscipline by students registered with the Examination Board;
- (h) remit a proportion of not less than thirty per cent of the fees collected under paragraph (e) to the Institute to support professional development
- (i) liaise with the Ministry of Education in accreditation of institutions offering the examination of the Board for the purposes of carrying out examinations;
- (j) promote recognition of its examination in foreign countries;
- (k) perform such other functions as may be necessary for proper administration of this Act.

Section 15(1) and (2) of Act No.17 of 2007 which it is proposed to amend –

Registration
committee

15.(1) There is hereby established the Registration Committee, which shall be a committee of the Council.

(2) The registration committee shall consist of -

- (a) a Chairperson appointed by the Council;
- (b) two persons who shall be qualified supplies practitioners, appointed by the Council;
- (c) one person nominated by the Federation of

Kenya Employers;

- (d) the Attorney-General or his representative nominated by him in writing;
- (e) one person nominated by the Kenya National Examination Council;
- (f) one person nominated by the Director-General of the Public Procurement Oversight Authority;
- (g) the Registrar, appointed by the Minister on the recommendation of the Council.

Section 19 of Act No. 17 of 2007 which it is proposed to amend –

Correction of register.

19.(1) The Institute may on the recommendation of the Registrar, make necessary alterations and corrections in the register in relation to any entry therein.

(2) The Institute on the recommendation of the Registrar, remove from the register -

- (a) the names of a deceased person;
- (b) the name of a person convicted of an offence under the Act;
- (c) the name of a person whose name the Council has under section 23 directed to be struck of the register; or
- (d) An entry which has been incorrectly or fraudulently made in the register.

(3) The Institute may with the consent of the person concerned, remove from the register the name of a person who has ceased to be a supplies practitioner.

Section 31 of Act No.9 of 2008 which it is proposed to amend –

Reference Group.

31.(1) Without prejudice to the powers vested in the organs of review under this Act, the Committee of Experts shall convene a reference group of thirty representatives

chosen by the interest groups identified in the Fourth Schedule to facilitate the consultations referred to in section 30.

(2) The interest groups identified in the Fourth Schedule shall each nominate one person to the Reference Group.

Section 33(4) of Act No. 9 of 2008 which it is proposed to amend –

(4) The National Assembly shall, within fifteen days of the tabling of the draft Constitution under subsection (3), debate it and -

- (a) approve the draft Constitution without amendment and submit it to Attorney-General for publication; or
- (b) propose amendments to the draft Constitution and submit the draft constitution of Experts for consultation and redrafting.

Section 33(8) of Act No. 9 of 2008 which it is proposed to amend –

(8) The meeting convened under subsection (7) shall be held in consecutive sessions over a period of not more than fourteen days and shall be chaired by the chairperson of the Committee of Experts.

Section 44 of Act No. 9 of 2007 which it is proposed to amend –

Petition to court to challenge referendum

44.(1) The conduct or result of the referendum may be challenged only by petition to the High Court made within fourteen days after the publication of the result of the referendum under section 43.

(2) A petitioner shall give notice of the petition to the Attorney-General and the Electoral Commission within seven days after the petition is made and the Attorney-General shall publish a notice of each petition of which notice has been received, in the Gazette within seven days of the expiry of the period prescribed in subsection (1).

(3) The petitioner shall within seven days after the petition is made deposit two million shillings with the court as security against costs.

(4) If security is not given in accordance with subsection (3), the petition shall be dismissed.

Section 45 of Act No. 9 of 2008 which it is proposed to amend –

Composition of court. 45.(1) A petition under section 44 shall be determined by a panel of five judges appointed by the Chief Justice.

(2) Unless otherwise ordered by the Chief Justice, interlocutory matters shall be dealt with by a single judge from the panel.

Section 34 of Act No.9 of 2008 which it is proposed to amend –

Publication of the proposed Constitution. 34(1) The Attorney-General shall, within thirty days receipt of the draft Constitution from the National Assembly under section 33, publish the draft Constitution.

(2) The Attorney-General shall not effect any alteration to the draft Constitution, except for editorial purposes, in consultation with the Parliamentary Select Committee.

(3) The Electoral Commission shall, within sixty days of the publication of the draft Constitution hold a referendum on the Proposed Constitution.

Section 37 of Act No.9 of 2008 which it is proposed to amend –

The Referendum question. 37.(1) The Electoral Commission shall within seven days of the publication of the draft Constitution by the Attorney-General under section 34, frame and publish the question to be determined by the referendum.

(2) The question referred to in subsection (1) shall be framed in consultation with the Parliamentary Select Committee.

(3) The question to be submitted to the referendum shall require the voter to indicate whether the voter approves or

does not approve the Proposed New Constitution and shall be so framed as to require the answer “Yes” or the answer “No”.

(4) The voting at a referendum shall be by secret ballot.

Section 38 of Act No. 9 of 2008 which it is proposed to amend-

Conduct of Referendum. 38. The Electoral Commission shall organize, conduct and supervise a referendum held under this Act.

Section 43(1) of the Act No.9 of 2008 which it is proposed to amend –

Process of ratification. 43.(1) The Electoral Commission shall publish the result of the referendum in the Gazette within two days of the holding of the referendum.

Section 44 (2) of Act No. 9 of 2008 which it is proposed to amend –

(2) A petitioner shall give notice of the petition to the Attorney-General and the Electoral Commission within seven days after the petition is made and the Attorney-General shall publish a notice of each petition of which notice has been received, in the Gazette within seven days of the expiry of the period prescribed in subsection (1).

Section 46(1) of Act No. 9 of 2008 which it is proposed to amend –

Powers of court. 46.(1) On a petition under section 44 challenging the conduct or result of the referendum the Court may -

- (a) dismiss the petition;
- (b) declare the published result to be incorrect;
- (c) order the Electoral Commission to repeat the polling in any place or places; or
- (d) annul the result of the referendum.

Section 58 (3) of Act No. 9 of 2008 which it is proposed to amend –

(3) The Electoral Commission may make Regulations prescribing any matter relating to the holding of the referendum.