

SPECIAL ISSUE

Kenya Gazette Supplement No. 138 (National Assembly Bills No. 48)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

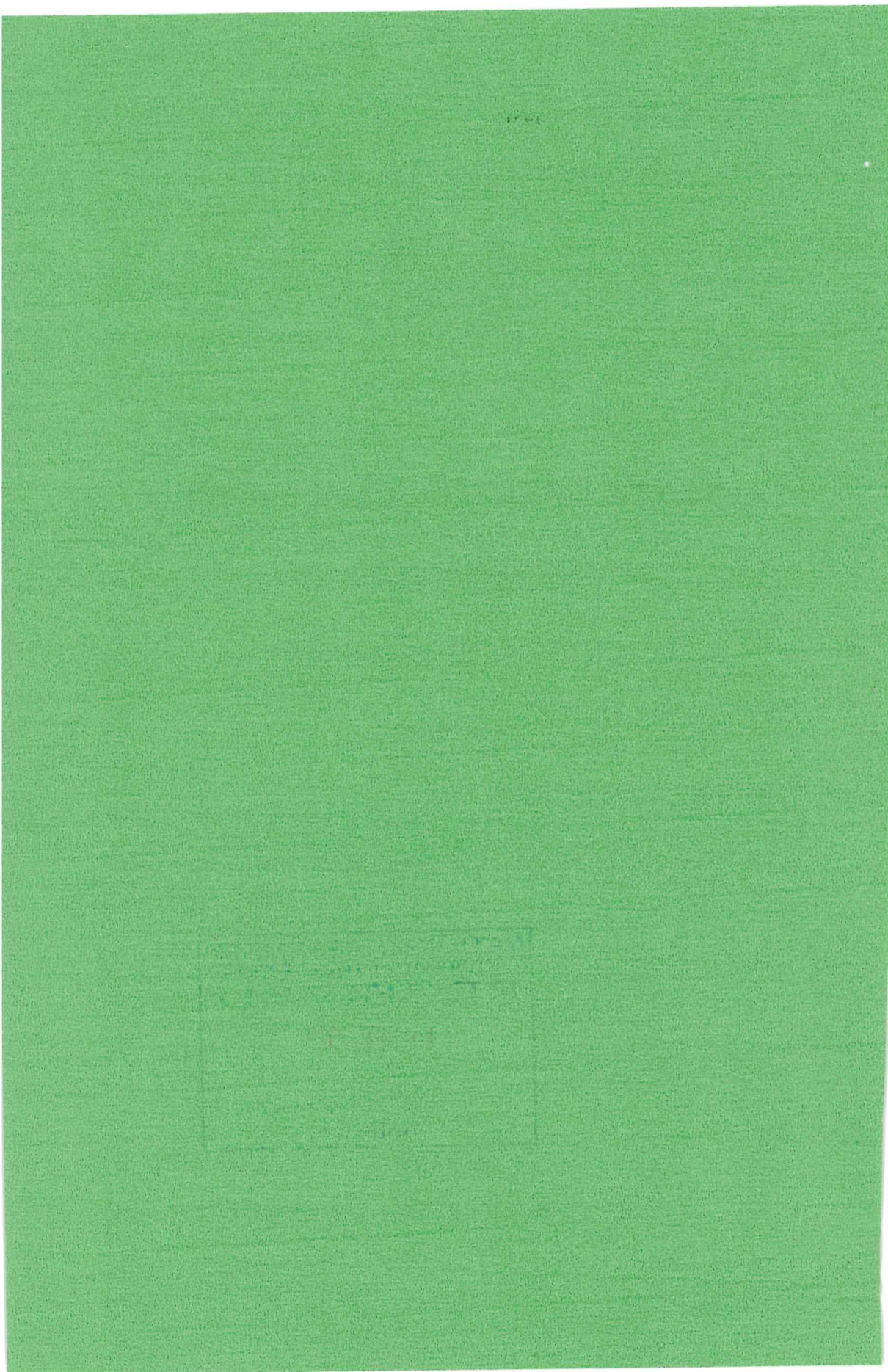
NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 18th August, 2023

CONTENT

| Bill for Introduction into the National Assembly— | PAGE |
|--|------|
| The Preservation of Public Security (Amendment) Bill, 2023 | 1451 |





**THE PRESERVATION OF PUBLIC SECURITY
(AMENDMENT) BILL, 2023**

A Bill for

AN ACT of Parliament to amend the Preservation of Public Security Act, Cap. 57 to abolish the death penalty

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Preservation of Public Security (Amendment) Act, 2023. Short title.

2. The Preservation of Public Security Act, Cap. 57 is amended in section 7 by— Amendment of section 7 of Cap. 57.

(a) deleting paragraph (a) in subsection 2 and substituting therefor with the following new paragraph—

“(a) make provision for the apprehension and punishment of persons offending against the regulations, for the imposition of penalties (including the forfeiture of any property connected in any way with any offence) exceeding those otherwise permitted by law to be imposed by regulations, and for the trial of such offenders by such courts, not being courts martial, and in accordance with such procedure as may be provided for by the regulations, and for the proceedings of such courts to be subject to such review as may be provided for, so, however that provision shall be made for such proceedings being reviewed by not less than two persons who hold or have held high judicial office, in all cases and in such other circumstances as may be provided by the regulations;”.

MEMORANDUM OF OBJECTS AND REASONS

The proposed object of the Preservation of Public Security (Amendment) Bill, 2023 is to abolish the death penalty and the imposition of a death sentence in relation to offences related to the preservation of public security. Abolishing the death penalty is aimed at preserving the fundamental right to life as guaranteed under Article 26 of the Constitution of Kenya, 2010.

The proposed legislation also puts an end to cruel, inhuman and degrading treatment and punishment of condemned persons occasioned by the enforcement of the death penalty and the psychological trauma brought about by death sentences.

The proposed legislation further ensures the country's compliance with Kenya's commitment under the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.

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

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

Statement on whether the Bill concerns County Governments

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

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 31st May, 2023.

J. OPIYO WANDAYI,
Leader of Minority Party.

Section 7 of Cap.57 which is intended to be amended—

7. Miscellaneous provisions relating to subsidiary legislation

- (1) Subsidiary legislation may—
 - (a) be made to apply to Kenya generally or to any part thereof, to any ship or aircraft in or over Kenya, to any Kenyan ship or aircraft wherever it may be, and to any person on board any such ship or aircraft;
 - (b) make different provisions with respect to different cases or classes of case and for different purposes of this Act, and, subject to the Constitution, may make different provisions with respect to different classes or descriptions of persons.
- (2) Regulations made under this Act may—
 - (a) make provision for the apprehension and punishment of persons offending against the regulations, for the imposition of penalties (including the penalty of death and the forfeiture of any property connected in any way with any offence) exceeding those otherwise permitted by law to be imposed by regulations, and for the trial of such offenders by such courts, not being courts martial, and in accordance with such procedure as may be provided for by the regulations, and for the proceedings of such courts to be subject to such review as may be provided for, so, however that provision shall be made for such proceedings being reviewed by not less than two persons who hold or have held high judicial office, in all cases in which sentence of death is passed, and in such other circumstances as may be provided by the regulations;
 - (b) authorize the search of persons and the entering and search of any premises, vessel, vehicle or aircraft;
 - (c) provide for the payment of compensation and remuneration to persons affected by the regulations;
 - (d) provide for charging in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the regulations, such fee as may be prescribed by or under the regulations;
 - (e) provide for the formation of tribunals and other bodies for the purpose of deciding such matters as may be specified in the regulations (but having no powers to inflict penalties);

- (f) provide for empowering such authorities or persons as may be specified in the regulations to make orders and rules for any of the purposes for which such regulations are authorized by this Act to be made;
- (g) contain such incidental and supplementary provisions as appear to the President to be necessary or expedient for the purposes of the regulations.

(3) Subsidiary legislation shall have effect notwithstanding anything inconsistent therewith contained in any law (including any law of the East African Services Organization) other than this Act or the Constitution, and any provision of any such law which may be inconsistent with any subsidiary legislation shall, whether that provision has or has not been amended, modified or suspended in its operation by any subsidiary legislation, to the extent of the inconsistency having no effect so long as such subsidiary legislation remains in force.

(4) The expiry or revocation of any subsidiary legislation shall be without prejudice to anything previously done thereunder or to the making of new subsidiary legislation.

