

THE PENAL CODE (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Penal Code; and for connected purposes

ENACTED by the Parliament of Kenya as follows—

Short title.

1. This Act may be cited as the Penal Code (Amendment) Act, 2023.

Amendment of section 4 of Cap. 63.

2. Section 4 of the Penal Code (in this Act known as the “principal Act”) is amended by inserting the following new definition in proper alphabetical sequence—

“imprisonment for life” means imprisonment for a term of thirty years;

“intellectual and psychosocial disability” means a condition where a person has problems with general mental abilities that affect the person’s intellectual functioning in learning, understanding, problem solving, judgment and adaptive functioning in daily activities including communication and independent living;

“intersex person” means a person whom a trained health professional has certified to have been born with sex characteristics, including genital, gonadal, chromosomal and hormonal patterns, that do not fit typical notions of male or female bodies;

“person suffering from a mental disorder” has the same meaning assigned to it in section 2 of the Mental Health Act.

Amendment of section 13 of Cap. 63.

3. Section 13 of the principal Act is amended—

(a) in paragraph (b) of subsection (2), by deleting the word “insane” and substituting therefor the words “suffering from mental disorder”;

- (b) in subsection (3), by deleting the word “insanity” and substituting therefor the words “mental health”.

Amendment of
section 24 of
Cap. 63.

4. Section 24 of the principal Act is amended by deleting paragraph (c).

Amendment of
section 25 of
Cap. 63.

5. Section 25 of the principal Act is amended—

(a) in subsection (2)—

- (i) by inserting the words “in accordance with sections 238 and 239 of the Children Act, 2022” immediately after the words “such person”;
- (ii) by deleting the words “to be detained during the President’s pleasure and, if so sentenced, he shall be liable to be detained in such place and under such conditions as the President may direct, and whilst so detained, shall be deemed to be in legal custody”;

(b) by deleting subsection (3).

Amendment of
section 28 of
Cap. 63.

6. Section 28 of the principal Act is amended—

(a) in subsection (2), by—

- (i) inserting the words “Criminal Justice Rules Committee established under the Criminal Procedure Code” immediately after the words “maximum fixed by the”;
- (ii) deleting the words “following scale” and the scale provided therefor;
- (iii) deleting the words “or detention under the Detention Camps Act (Cap 91)”;

- (b) in subsection (3), by deleting the words “or detention”.

Amendment of section 40 of Cap. 63.

7. Section 40 of the principal Act is amended in subsection (3) by deleting the word “shall be sentenced to death” and substituting therefor the words “liable to be sentenced to death”.

Amendment of section 60 of Cap. 63.

8. Section 60 of the principal Act is amended by deleting the word “shall be sentenced to death” and substituting therefor the words “liable to be sentenced to death”.

Repeal of section 66 of Cap. 63.

9. The principal Act is amended by deleting section 66.

Amendment of section 96 of Cap. 63.

10. Section 96 of the principal Act is amended by deleting the words “the burden of proof whereof shall lie upon him”.

Amendment of section 112A of Cap. 63.

11. Section 112A of the principal Act is amended in subsection (4), by deleting the word “manslaughter” and substituting therefor the words “second degree murder”.

Amendment of section 132 of Cap. 63.

12. Section 132 of the principal Act is amended by deleting words “the burden of proof whereof shall lie upon him”.

Amendment of section 146 of Cap. 63.

13. Section 146 of the principal Act is amended by—

- (a) deleting the words “be an idiot or imbecile” and substituting therefor the words “have an intellectual or psychosocial disability”;
- (b) deleting the words “was an idiot or imbecile” and substituting therefor the words “had an intellectual or psychosocial disability”.

Repeal of section 153 of Cap. 63.

14. The principal Act is amended by deleting section 153.

Repeal of section 154 of Cap. 63.

15. The principal Act is amended by deleting section 154.

- Repeal of section 155 of Cap. 63. **16.** The principal Act is amended by deleting section 155.
- Insertion of new section 160A in Cap. 63. **17.** The principal Act is amended by inserting the following new section immediately after Section 160—
- Criminal liability. **160A.** It shall not be an offence under sections 158, 159 or 160 if any person was acting in accordance with the circumstances contemplated under Article 26(4) of the Constitution.
- Repeal of section 171 of Cap. 63. **18.** The principal Act is amended by deleting section 171.
- Repeal of section 173 of Cap. 63. **19.** The principal Act is amended by deleting section 173.
- Repeal of section 182 of Cap. 63. **20.** The principal Act is amended by deleting section 182.
- Repeal of section 191 of Cap. 63. **21.** The principal Act is amended by deleting section 191.
- Repeal of section 192 of Cap. 63. **22.** The principal Act is amended by deleting section 192.
- Repeal of section 193 of Cap. 63. **23.** The principal Act is amended by deleting section 193.
- Repeal of section 194 of Cap. 63. **24.** The principal Act is amended by deleting section 194.
- Repeal of section 195 of Cap 63. **25.** The principal Act is amended by deleting section 195.
- Repeal of section 196 of Cap 63. **26.** The principal Act is amended by deleting section 196.
- Repeal of section 197 of Cap 63. **27.** The principal Act is amended by deleting section 197.

Repeal of section 198 of Cap 63.

28. The principal Act is amended by deleting section 198.

Repeal of section 199 of Cap 63.

29. The principal Act is amended by deleting section 199.

Repeal of section 200 of Cap 63.

30. The principal Act is amended by deleting section 200.

Repeal and replacement of section 203 of Cap. 63.

31. The principal Act is amended by deleting section 203 and replacing it with the following new section—

Degrees of murder.

203. (1) Murder is first-degree murder or second-degree murder.

(2) A person commits first-degree murder if that person, of malice aforethought, causes the death of another person by the perpetration of, or an attempt to perpetrate, an unlawful act or omission including one or more of the following—

- (a) poisoning, causing grievous harm, or any other kind of wilful, deliberate, malicious and premeditated killing; or
- (b) any arson, treason, escape, murder, kidnapping, abduction, torture, injury by explosive substances, terrorist act, espionage, sabotage, intimidation, molestation, sexual offence, child abuse, housebreaking, burglary, or robbery; or
- (c) a premeditated design unlawfully and maliciously to effect death of any human being other than him who is killed; or

(d) killing for the benefit of, at the direction of, or in association with a criminal organisation.

(3) Any person who, by any other unlawful act or omission, causes the death of another person, commits second-degree murder.

(4) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily injury.

Repeal and replacement of section 204 of Cap. 63.

32. The principal Act is amended by deleting section 204 and replacing it with the following new section—

Punishment of murder.

204. (1) A person convicted of first-degree murder shall be liable to be sentenced to death.

(2) A person convicted of second-degree murder shall be liable to imprisonment for life.

Repeal of section 206 of Cap. 63.

33. The principal Act is amended by deleting section 206.

Amendment of section 220 of Cap 63.

34. Section 220 of the principal Act is amended in paragraph (b) by deleting the words “for life” and substituting therefor the words “for a period not exceeding thirty years”.

Amendment of section 222 of Cap 63.

35. Section 222 of the principal Act is amended by deleting the words “for life” and substituting therefor the words “for a period not exceeding thirty years”.

Repeal of section 226 of Cap. 63.

36. The principal Act is amended by deleting section 226.

Repeal and replacement of section 295 of Cap. 63.

37. The principal Act is amended by deleting section 295 and replacing it with the following new section—

Definition of first-degree and second-degree robbery.

295. (1) Any person is guilty of first-degree robbery if that person steals anything and, at or immediately before or immediately after the time of stealing it—

- (a) is armed with any firearm or any offensive weapon, or any obnoxious or chemical material; or
- (b) displays what appears to be a firearm or offensive weapon, or obnoxious or chemical material; or
- (c) is in company with any person or persons; or
- (d) wounds, beats, strikes or uses any other personal violence to any person; or
- (e) acts for the benefit of, at the direction of, or in association with, a criminal organisation.

(2) Any person who steals anything and, at or immediately before or immediately after the time of stealing it, uses or threatens to use any other form of violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to it being stolen or retained, is guilty of second-degree robbery.

Repeal and replacement of section 296 of Cap. 63.

38. The principal Act is amended by deleting section 296 and replacing it with the following new section—

Punishment for first-degree or second-degree robbery.

296. (1) Any person convicted of first-degree robbery is liable to be sentenced to death.

(2) Any person convicted of second-degree robbery is liable to imprisonment for life.

Repeal and replacement of section 297 of Cap. 63.

39. The principal Act is amended by deleting section 297 and replacing it with the following new section—

Attempted robbery.

297. (1) Any person who, with intent to steal anything and, at or immediately before or immediately after attempting to steal it, is guilty of a felony, and shall be liable to imprisonment for life, if that person —

- (a) is armed with any firearm, or any offensive weapon, or any obnoxious or chemical material; or
- (b) displays what appears to be a firearm, or an offensive weapon, or an obnoxious or chemical material; or
- (c) is in company with any person or persons; or
- (d) wounds, beats, strikes or uses any other personal violence to any person; or
- (e) acts for the benefit of, at the direction of, or in association with, a criminal organisation.

(3) Any person who, with intent to steal anything and, at or immediately before or immediately after the time of attempting to steal it, uses or threatens to use any other form of violence to any person or property in order to obtain or retain the thing intended to be stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of a felony and liable to imprisonment for a period not exceeding fourteen years.

MEMORANDUM AND OBJECTS OF REASON

The principal object of this Bill is to amend the Penal Code to provide for human-rights-friendly language in relation to persons with intellectual and psychosocial disabilities; to remove the subjection of children sentenced in lieu of death penalty from detention at the President's pleasure; to shift the burden of proof for the offences of incitement to violence and disobedience from the accused person to the prosecution; and to repeal petty offences. The Bill also seeks to amend the Penal Code to protect intersex persons affected by the criminal justice processes; and to cascade the offences of murder and robbery in order to ensure commensurate punishment for the different offences; to amend the provisions relating to mandatory death penalty in compliance with the judgements of the High Court on the prevailing human rights standards.

Section 13 of Cap. 63 which it is proposed to amend—

13. Intoxication

(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and—

(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

(b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

(3) Where the defence under subsection (2) is established, then in a case falling under paragraph (a) thereof the accused shall be discharged, and in a case falling under paragraph (b) the provisions of this Code and of the Criminal Procedure Code (Cap. 75) relating to insanity shall apply.

Section 24 of Cap. 63 which it is proposed to amend—

24. Different kinds of punishments

The following punishments may be inflicted by a court—

(a) death;

(b) imprisonment or, where the court so determines under the Community Service Orders Act, 1998, community service under a community service order;

(c) detention under the Detention Camps Act;

(d) deleted by Act No. 5 of 2003, s. 3;

(e) fine;

(f) forfeiture;

(g) payment of compensation;

(h) finding security to keep the peace and be of good behaviour;

(i) any other punishment provided by this Code or by any other Act.

Section 25 of Cap. 63 which it is proposed to amend—

25. Sentence of death

(2) * Sentence of death shall not be pronounced on or recorded against any person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years, but in lieu thereof the court shall sentence such person to be detained during the President's pleasure, and if so sentenced he shall be liable to be detained in

such place and under such conditions as the President may direct, and whilst so detained shall be deemed to be in legal custody.

*Power delegated to the Minister and to the Permanent Secretary of the Ministry for the time being responsible for Prisons (L.N. 579/1963).

(3) When a person has been sentenced to be detained during the President's pleasure under subsection (2), the presiding judge shall forward to the President a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

Section 28 of Cap. 63 which it is proposed to amend—

28. Fines

2) In the absence of express provisions in any written law relating thereto, the term of imprisonment or detention under the Detention Camps Act (Cap. 91) ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 32 or compensation under section 31 or in respect of the non-payment of a fine or of any sum adjudged to be paid under the provisions of any written law shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any such case the maximum fixed by the following scale—

Amount	Maximum period
Not exceeding sh. 500	14 days
Exceeding sh. 500 but not exceeding sh. 2,500	1 month
Exceeding sh. 2,500 but not exceeding sh. 15,000	3 months
Exceeding sh. 15,000 but not exceeding sh. 50,000	6 months
Exceeding sh. 50,000	12 months

(3) The imprisonment or detention which is imposed in default of payment of a fine shall terminate whenever the fine is either paid or levied by process of law.

Section 40 of Cap. 63 which it is proposed to amend—

40. Treason

(3) Any person who is guilty of the offence of treason shall be sentenced to death.

Section 60 of Cap. 63 which it is proposed to amend—

60. Administration of unlawful oaths to commit capital offences

Any person who administers an oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence, punishable with death, is guilty of a felony and shall be sentenced to death.

Section 66 of Cap. 63 which it is proposed to amend—

66. Alarming publications

(1) Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace is guilty of a misdemeanour.

(2) It shall be a defence to a charge under subsection (1) if the accused proves that, prior to publication, he took such measures to verify the accuracy of the statement, rumour or report as to lead him reasonably to believe that it was true.

Section 96 of Cap. 63 which it is proposed to amend—

96. Incitement to violence and disobedience of the law

Any person who, without lawful excuse, the burden of proof whereof shall lie upon him, utters, prints or publishes any words, or does any act or thing, indicating or implying that it is or might be desirable to do, or omit to do, any act the doing or omission of which is calculated—

- (a) to bring death or physical injury to any person or to any class, community or body of persons; or
- (b) to lead to the damage or destruction of any property; or
- (c) to prevent or defeat by violence or by other unlawful means the execution or enforcement of any written law or to lead to defiance or disobedience of any such law, or of any lawful authority,

is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

Section 112A of Cap. 63 which it is proposed to amend—

112A. Malicious information

(1) Any person who, with intent to cause harm or inconvenience to another person, gives or makes to—

(a) any magistrate or member of the police force; or

(b) any officer having power to apprehend or order the apprehension of offenders,

any information or complaint in relation to that other person that he knows to be false is guilty of a misdemeanour or, where subsection (3) or (4) applies, of a felony.

(2) Where, as a result of an offence under this section, any person sustains actual bodily harm, the offender shall on conviction be liable to be punished as for assault occasioning actual bodily harm.

(3) Where, as a result of an offence under this section, any person sustains grievous harm, the offender shall on conviction be liable to be punished as for doing grievous harm.

(4) Where, as a result of an offence under this section, any person dies, the offender shall on conviction be liable to be punished as for manslaughter.

(5) For the purposes of this section, any harm to or death of a person shall be deemed to have resulted from an offence under this section if the court is satisfied that, as a matter of fact, and without regard to the actions or motivations of any person other than the offender, the harm would not have been done or the death would not have occurred, as the case may be, if the offence had not been committed.

Section 132 of Cap. 63 which it is proposed to amend—

132. Undermining authority of public officer

Any person who, without lawful excuse, the burden of proof whereof shall lie upon him, utters, prints, publishes any words, or does any act or thing, calculated to bring into contempt, or to excite defiance of or disobedience to, the lawful authority of a public officer or any class of public officers is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

Section 146 of Cap. 63 which it is proposed 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.

Section 153 of Cap. 63 which it is proposed to repeal—

153. Male person living on earnings of prostitution or soliciting

(1) Every male person who—

(a) knowingly lives wholly or in part on the earnings of prostitution; or

(b) in any public place persistently solicits or importunes for immoral purposes,

is guilty of a felony.

(2) Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall unless he satisfies the court to the contrary be deemed to be knowingly living on the earnings of prostitution.

Section 154 of Cap. 63 which it is proposed to repeal—

154. Woman living on earnings of prostitution or aiding, etc., prostitution

Every woman who knowingly lives wholly or in part on the earnings of prostitution, or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, is guilty of a felony.

Section 155 of Cap. 63 which it is proposed to repeal—

155. Premises used for prostitution

If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a woman or girl for the purposes of prostitution, and that any person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, or is exercising control, direction or influence over the movements of the prostitute, the magistrate may issue a warrant authorizing any police officer to enter and search the house and to arrest such person.

Section 171 of Cap. 63 which it is proposed to repeal—

171. Bigamy

Any person who, having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of the husband or wife, is guilty of a felony and is liable to imprisonment for five years:

Provided that this section shall not extend to any person whose marriage with the husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife if the husband or wife, at the time of the subsequent marriage, has been continually absent from such person for the space of seven years, and has not been heard of by such person as being alive within that time.

Section 173 of Cap. 63 which it is proposed to repeal—

173. Master not providing for servants or apprentices

Any person who being legally liable, either as master or mistress, to provide for any apprentice or servant necessary food, clothing or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or unlawfully and maliciously does or causes to be done any bodily harm to such apprentice or servant so that the life of such apprentice or servant is endangered or that his health has been or is likely to be permanently injured, is guilty of a misdemeanour.

Section 182 of Cap. 63 which it is proposed to repeal—

182. Idle and disorderly persons

The following persons—

- (a) every common prostitute behaving in a disorderly or indecent manner in any public place;
- (b) every person causing, procuring or encouraging any person to beg or gather alms;
- (c) *deleted by Act No. 61 of 1968, s. 22;*
- (d) every person who publicly conducts himself in a manner likely to cause a breach of the peace;
- (e) every person who without lawful excuse publicly does any indecent act;
- (f) every person who in any public place solicits for immoral purposes;
- (g) *deleted by Act No. 61 of 1968, s. 22,*

shall be deemed idle and disorderly persons, and are guilty of a misdemeanour and are liable for the first offence to imprisonment for one month or to a fine

not exceeding one hundred shillings, or to both and for every subsequent offence to imprisonment for one year.

Section 191 of Cap. 63 which it is proposed to repeal—

191. Fouling water

Any person who voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanour.

Section 192 of Cap. 63 which it is proposed to repeal—

192. Fouling air

Any person who voluntarily vitiates the atmosphere in any place, so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is guilty of a misdemeanour.

Section 193 of Cap. 63 which it is proposed to repeal—

193. Offensive trades

Any person who, for the purposes of trade or otherwise, makes loud noises or offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights commits an offence and is liable to be punished as for a common nuisance.

Section 194 of Cap. 63 which it is proposed to repeal—

194. Definition of libel

Any person who, by print, writing, painting or effigy, or by any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanour termed libel.

Section 195 of Cap. 63 which it is proposed to repeal—

195. Definition of defamatory matter

Defamatory matter is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation; and it is immaterial whether

at the time of the publication of the defamatory matter the person concerning whom the matter is published is living or dead.

Section 196 of Cap. 63 which it is proposed to repeal—

196. Definition of publication

- (1) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed to be so dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.
- (2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

Section 197 of Cap. 63 which it is proposed to repeal—

197. Definition of unlawful publication

Any publication of defamatory matter concerning a person is unlawful within the meaning of this Chapter, unless—

- (a) the matter is true and it was for the public benefit that it should be published; or
- (b) it is privileged on one of the grounds hereafter mentioned in this Chapter.

Section 198 of Cap. 63 which it is proposed to repeal—

198. Cases in which publication of defamatory matter is absolutely privileged

- (1) The publication of defamatory matter is absolutely privileged, and no person shall under any circumstances be liable to punishment under this Code in respect thereof, in any of the following cases, namely—
 - a) if the matter is published by the President, or by the Cabinet of Ministers, or in Parliament, in any case in an official document or proceeding; or
 - b) if the matter is published in the Cabinet of Ministers, or in Parliament, in any case by the President, or by a Minister, or by a Member of Parliament, as the case may be; or
 - c) if the matter is published by order of the President or by order of the Cabinet of Ministers; or

- d) if the matter is published concerning a person subject to military or naval discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct, and to some person having authority over him in respect of such conduct; or
 - e) if the matter is published in the course of any judicial proceedings by a person taking part therein as a judge, magistrate, commissioner, advocate, assessor, witness or party thereto; or
 - f) if the matter published is in fact a fair report of anything said, done or published in the Cabinet of Ministers or in Parliament; or
 - g) if the person publishing the matter is legally bound to publish it.
- (2) Where a publication is absolutely privileged, it is immaterial for the purposes of this Chapter whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith:
Provided that nothing in this section shall exempt any person from any liability to punishment under any other Chapter of this Code or under any other written law in force within Kenya.

Section 199 of Cap. 63 which it is proposed to repeal—

199. Cases in which publication of defamatory matter is conditionally privileged

A publication of defamatory matter is privileged, on condition that it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it to the person to whom the publication is made or has a legitimate personal interest in so publishing it, provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, and in any of the following cases, namely—

- (a) if the matter published is in fact a fair report of anything said, done or shown in a civil or criminal inquiry or proceeding before any court:
Provided that if the court prohibits the publication of anything said or shown before it, on the ground that it is seditious, immoral or blasphemous, the publication thereof shall not be privileged; or
- (b) if the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of it was or would have been privileged under section 198; or
- (c) if the matter is an expression of opinion in good faith as to the conduct of a person in a judicial, official or other public capacity, or as to his personal character so far as it appears in such conduct; or
- (d) if the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct; or

- (e) if the matter is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a public legal proceeding, whether civil or criminal, or as to the conduct of any person as a party, witness or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct as in this paragraph mentioned; or
- (f) if the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech or other work, performance or act published or publicly done or made or submitted by a person to the judgment of the public, or as to the character of the person so far as it appears therein; or
- (g) if the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person so far as it appears in such conduct; or
- (h) if the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter, or having authority by law to inquire into or receive complaints respecting such conduct or matter; or
- (i) if the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of some person in whom the person to whom it is published is interested.

Section 200 of Cap. 63 which it is proposed to repeal—

200. Explanation as to good faith

A publication of defamatory matter shall be deemed not to have been made in good faith by a person, within the meaning of section 199, if it is made to appear either—

- (a) that the matter was untrue, and that he did not believe it to be true; or
- (b) that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false; or
- (c) that, in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged.

Section 203 of Cap. 63 which it is proposed to repeal and replace—

203. Murder

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

Section 204 of Cap. 63 which it is proposed to repeal and replace—

204. Punishment of murder

Any person convicted of murder shall be sentenced to death.

Section 206 of Cap. 63 which it is proposed to repeal—

206. Malice aforethought

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- (c) an intent to commit a felony;
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

Section 220 of Cap. 63 which it is proposed to amend—

220. Attempt to murder

Any person who—

- (a) attempts unlawfully to cause the death of another; or
 - (b) with intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life,
- is guilty of a felony and is liable to imprisonment for life.

Section 222 of Cap. 63 which it is proposed to amend—

222. Accessory after the fact to murder

Any person who becomes an accessory after the fact to murder is guilty of a felony and is liable to imprisonment for life.

Section 226 of Cap. 63 which it is proposed to repeal—

226. Attempting suicide

Any person who attempts to kill himself is guilty of a misdemeanour.

Section 295 of Cap. 63 which it is proposed to repeal and replace—

295. Definition of robbery

Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed robbery.

Section 296 of Cap. 63 which it is proposed to repeal and replace—

296. Punishment of robbery

(1) Any person who commits the felony of robbery is liable to imprisonment for fourteen years.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.

Section 297 of Cap. 63 which it is proposed to repeal and replace—

297. Attempted robbery

(1) Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatensto use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of a felony and is liable to imprisonment for seven years.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds,

beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.