**THE FAMILY PROTECTION BILL, 2023**

**ARRANGEMENT OF CLAUSES**

Clause

**PART I – PRELIMINARY**

1—Short title.

2— Interpretation.

3—Objects of the Act.

**PART II – PROHIBITED SEXUAL ACTS AND OTHER ACTIVITIES**

4—Prohibition of homosexuality.

5—Prohibition of aggravated homosexuality.

6— Prohibition of same sex marriage.

7—Procuring prohibited sexual activities by false pretences.

8— Prohibition of other unnatural sexual acts.

9—Detention with intent to commit prohibited sexual activity.

10—Premises for prohibited sexual activity.

11—Prohibition of gross indecency.

12—Promotion of prohibited activities.

13—Prohibition of funding of prohibited activities.

14— Prohibition of sex reassignment prescriptions or procedures.

15— Disclosure of information.

16— Arrest by citizens.

**PART III – PROTECTION OF CHILDREN**

17— Children’s right to education.

18— Right of parents to education of their children

19— Promotion of prohibited activities to a child.

20— Protection of children in schools.

21— Prohibition of child grooming.

22— Prohibition of child pornography.

23— Disqualification of offenders from acting as guardians, adopting, fostering children etc.

24— Monitoring of child care institutions.

25— Disqualification of convicts from employment in child care institutions.

26— Disclosure of sexual offences record.

**PART IV – PROTECTION OF VICTIMS OF SEXUAL OFFENCES**

27— Protection of victims of prohibited sexual acts.

28— Compensation of victims.

29— Confidentiality.

30— Access to emergency medical care and assistance.

31— Rehabilitation.

**PART V - LIMITATION OF RIGHTS AND FUNDAMENTAL FREEDOMS**

32— Conditions for limitation of rights and fundamental freedoms.

33— Limitation of right to privacy.

34— Limitation of right to freedom of conscience, religion, belief and opinion.

35— Limitation of freedom of expression.

36— Limitation of freedom of the media.

37— Limitation of access to information.

38— Limitation of right to freedom of association.

39—Limitation of the right to assemble, demonstrate, picket and petition.

**PART V – MISCELLANEOUS PROVISIONS**

40— Refugees and asylum seekers convicted.

42— Consequential amendments

**THE FAMILY PROTECTION BILL, 2023**

**A Bill for**

**AN ACT of Parliament to provide for the protection of the family in furtherance of Article 45 of the Constitution, to prohibit homosexuality and same sex marriage, to prohibit unnatural sexual acts and related activities and to proscribe activities that seek to advance, advocate, promote or fund homosexuality and unnatural sexual acts and for connected purposes.**

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

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|  | **PART I – PRELIMINARY** |
| Short title. | 1. This Act may be cited as the Family Protection Act, 2023. |
| Interpretation. | 1. In this Act, unless the context otherwise requires— |
|  | “basic education” means the educational programmes offered and imparted to a person who is below eighteen years in an institution of basic education or child care institution;  “child” means an individual who has not attained the age of eighteen years; |
|  | “child care institution” includes an orphanage, children’s home, open shelter, an institution of learning or any residential childcare institution, whether licensed or unlicensed. and whether private, public or charitable, established for purposes of providing care, protection or training to children who need such services; |
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|  | “family” means the natural and fundamental unit of society comprising persons united by ties of marriage between man and woman; by ties of blood or ties of adoption; interacting with each other in their respective social positions as spouses, parents, children or siblings; |
|  | “female” means the biological state of being born with female reproductive system; |
|  | “imprisonment for life” means imprisonment for the natural life of a person without the possibility of being released;    “institution of basic education” means a public or private institution or facility used wholly or partly, regularly or periodically for conducting basic education and training and includes pre-primary, primary or secondary school, tuition facility, educational centre, academy, research institution, school correctional facility or borstal institution or madrassa;  “intersex” means a congenital condition of sex development in which the development of the chromosomal, gonadal or anatomic sex is atypical leading to ambiguous genitalia making it difficult to identify their sex at birth and before development of secondary sexual characteristics at puberty; |
|  | “male” means the biological state of being born with the male reproductive system; |
| No. 4 of 2014. | “marriage” is the voluntary union of a man and a woman whether in a monogamous or polygamous union as defined under the Marriage Act; |
|  | “person in authority” means a person charged with the duty ot responsibility for the health, education, welfare or supervision of a person; |
|  | “pornography" includes the representation in books, magazines, photographs, films, and other media or telecommunication apparatus of scenes of sexual behaviour that are erotic or lewd designed to arouse sexual interest; |
|  | “sex” means the biological state of being male or female as physically observed and assigned at birth, or as medically determined and assigned by the time the person reaches puberty; but excludes sexual orientation and gender identity; |
|  | “victim of the offence” means a child or any other person against whom the offence of aggravated homosexuality has been committed; |
|  | “vulnerable person” means a person who is in need of special protection because of age, sex, illness, physical or mental disability, social or personal status including a person with disability, victim of sex-based violence, illiterate person or elderly person. |
| Objects of the Act. | 1. The objects of this Act are —    1. to recognize and promote the family as the natural and fundamental unit of the Kenyan society and necessary basis of social order and a strong force for social cohesion and integration; and, to protect the family from harmful and destructive sexual acts and activities in furtherance of Article 45 of the Constitution;    2. to provide for the role of the state and government in promoting, protecting and assisting the family as the basic unit of society and the natural environment for the growth and wellbeing of all its members and particularly children to enable the family to fully assume its place and responsibilities within the society;    3. to promote marriage between man and woman and to proscribe homosexuality, same sex unions and relationships, unnatural sexual acts and related activities; and. to proscribe activities that seek to advance, advocate, promote, fund, abet or aid homosexuality and unnatural sexual acts;    4. to strengthen the nation’s capacity to deal with emerging internal and external threats to the family and to the cultural sovereignty of the nation;    5. to preserve and protect the cultural and family values of the Kenyan people against emerging threats; and, to uphold Article 44 of the Constitution which provides that “a person shall not compel another person to perform, observe or undergo any cultural practice and rite”;    6. to uphold the best interest of children as the future of the Kenyan society; protect children from sexual abuse and harmful sexual practices; and to obligate parents, guardians, teachers and those in charge of child care institutions to ensure that children and young persons receive special protection against exposure to physical, emotional and moral hazards;    7. to recognize, uphold the right of the parents to choose the kind of education that shall be given to their children as provided in Article 26 (3) of the Universal Declaration of Human Rights; and to secure respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions as set out in Article 18 (4) of the International Covenant on Civil and Political Rights;    8. to protect vulnerable persons from sexual harm; protect the dignity and respect of persons with disabilities; protect the youth from harmful practices and exploitation; and to secure the rights of older persons to live in dignity and respect and to be free from abuse as mandated by the Constitution. |
|  | **PART II – PROHIBITED SEXUAL ACTS AND OTHER ACTIVITIES** |
| Prohibition of homosexuality. | 1. (1) A person who engages in sexual act with a person of the same sex commits the offence of homosexuality and is liable upon conviction to imprisonment for a term of not less than ten years.   (2) A sexual act under this section means—   1. penetration of the anus or mouth of a male person by the penis of another male person or by a sex contraption or other object manipulated by another male person; 2. contact between the genitalia or mouth a female person with the genitalia or mouth of another female person or by a sex contraption or other object manipulated by another female person; 3. A person who engages in sexual act or permits a male person to perform sexual act under subsection (2) (a) on him commits an offence and is liable on conviction to imprisonment for a term of not less than ten years. 4. In the case of an offence under subsection (2) (a), the offender shall upon conviction be liable to imprisonment for not less than twenty years where the victim did not consent or where the purported consent was obtained by force or by any means of threats, coercion or intimidation, or by fear of bodily harm, or by means of false representations as to the nature of the act. 5. A person who commits any of the acts under subsection (2) (a) with a child commits an offence and shall upon conviction be liable upon conviction be sentenced to death 6. Persons sentenced to imprisonment for an offence under subsection (1) shall be held in separate facilities. |
| Prohibition of aggravated homosexuality | 1. (1)A person who engages in sexual act with a person of the same sex in any of the circumstances specified in subsection (2) commits the offence of aggravated homosexuality and shall on conviction be sentenced to death.    * 1. The circumstances referred to in subsection (1) are where—   (a) the person against whom the offence is committed is a child;   * 1. the person against whom the offence is committed is a person with disability; or suffers a disability as a result of the sexual act;   2. the person against whom the offence is committed is a person with mental illness or suffers a mental illness as a result of the sexual act;   3. the person against whom the offence is committed is an older member of the society under Article 57 of the Constitution;   4. the offender is a parent, guardian or relative of the person against whom the offence is committed;   5. the person against whom the offence is committed contracts a terminal illness as a result of the sexual act;   6. the offender is a person in authority over the person against whom the offence is committed;   7. the offence was committed without the consent of the person, or the offence was committed with that person’s consent but the consent was obtained by force or by means of threats means of threats, force, fear of bodily harm, duress, undue influence, through misrepresentation as to the nature of the act or intimidation of any kind; or   8. the person against whom the offence is committed was at the time the offence was committed, unconscious or in an altered state of consciousness due to the influence of medicine, drugs, alcohol or any other substance that impaired his or her judgment. |
| Prohibition of same sex marriage, union | 1. (1) Any purported marriage or other form of union between persons or sexual partners of the same sex is void. 2. A certificate issued by a foreign authority of a purported marriage or other form of union between persons or sexual partners of the same sex is unenforceable in Kenya. 3. A person who— 4. purports to contract a marriage or other form of civil union between persons or sexual partners of the same sex; or 5. presides over, conducts, administers, witnesses, solemnizes a purported marriage or other form of union between persons of the same sex; or 6. issues or aids in procuring a certificate in respect of a purported marriage or other form of union between persons of the same sex; or 7. knowingly attends, aids, abets, participates in the preparation or solemnization of a purported marriage or other form of union between persons of the same sex   commits an offence and is liable on conviction to imprisonment for a term of not less than ten years. |
| Prohibition of other unnatural sexual acts. | 1. A person who engages in or performs sexual act on an animal commits an offence and is liable on conviction to imprisonment for a term of not less than ten years |
| Procuring prohibited sexual activities by false pretences. | 1. A person who by coercion, false pretences or false representations procures another person of the same sex to engage with him or her in a sexual activity prohibited under this Act commits an offence and is liable, on conviction to imprisonment for a term of not less than ten years. |
| Detention with intent to commit a prohibited sexual act. | 1. (1) A person who detains another person with the intent to cause that person to engage in a sexual activity prohibited under this Act commits an offence and is liable, upon conviction, to imprisonment for a term of not less than ten years.    * 1. A person who detains a child with the intent to cause that child to engage in a sexual activity prohibited under this Act commits an offence and shall upon conviction be sentenced to death. |
| Premises for prohibited sexual activity. | 1. (1) A person who keeps a house, office space, room, set of rooms or any other movable or immovable asset for purposes of a sexual activity prohibited under this Act, commits an offence and is liable, upon conviction, to imprisonment for a term of not less than five years.    * 1. A person who, being the owner or occupier of premises or any other movable or immovable asset or having or acting or assisting in the management or control of the premises, induces or allows a person to be on the premises for the purpose of engaging in a sexual activity prohibited under this Act, commits an offence and is liable, upon conviction, to imprisonment for a term of not less than five years. |
| Prohibition of gross indecency. | 1. (1) A person who willfully commits a grossly indecent act commits an offence and is liable, on conviction, to imprisonment for a term of not less than ten years.   (2) For purposes of this section, "grossly indecent act" means—   1. public show of lewd or amorous relations between or among persons of the same sex; 2. being nude in public or engaging in acts of indecent exposure; 3. cross-dressing to portray that the person is of a sex different from the sex assigned at birth; 4. assembly, demonstration or parade while identifying or holding out as persons engaged in activities prohibited under this Act or with the intent to engage in act or activity prohibited under this Act; 5. knowingly accessing or using bathrooms, washrooms, toilets, hostel and other facilities designated for strict use by persons of the opposite sex. |
| Promotion of prohibited activities. | 1. (1) A person who promotes activity prohibited under this Act commits an offence and is liable on conviction to a fine of not less than one million shillings or to imprisonment for a term not less than ten years, or to both.   (2) A person promotes activity prohibited under this Act where the person—  (a) encourages or persuades another person to perform sexual act or to do any other act that constitutes an offence under this Act;  (b) engages or participates in an activity that is intended to indoctrinate a change of perception or public opinion towards an act prohibited under this Act;  (c) knowingly produces, markets, advertises, publishes, prints, broadcasts, distributes or causes the production, marketing advertisement, publication, printing, broadcasting or distribution by any means including the use of a computer, information system, the internet, media, technological platform, technological account, electronic device, film, or any other device capable of electronic storage or transmission of any material promoting or encouraging homosexuality or the commission of an offence under this Act;  (d) provides financial support, whether in kind or cash, to facilitate activity prohibited under this Act or the observance or normalisation of conduct that is prohibited under this Act;  (e) offers premises or any other movable or immovable asset or knowingly leases or sublets, uses or allows another person to use any house, building or establishment for the purpose of undertaking activities that encourage activity prohibited under this Act; or  (f) operates an organisation which promotes or encourages activity prohibited under this Act or the observance or normalisation of conduct that is prohibited under this Act.   1. Where a body corporate, including a partnership, is charged with an offence under this section and the body corporate is convicted, the company or partnership and each officer of the company or partnership are each liable to a fine of not less than one million shillings or to imprisonment for a term not less than ten years, or to both. 2. Where an unincorporated body of persons is convicted under this section, the principal officers of the body of persons shall be deemed to have also committed the offence and are each liable to a fine of not less than one million shillings or to imprisonment for a term not less than ten years, or to both. 3. Where an offence prescribed under this section is committed by a legal entity whether corporate or unincorporated the court may upon conviction and in addition to such fine or imprisonment sentence as may have been imposed suspend the licence of the entity for a period of one years or cancel the licence granted to the entity. |
| Prohibition of funding of prohibited activities. | 1. (1) A person who funds, sponsors or donates toward an activity prohibited under this Act, commits an offence and is liable, on conviction, to imprisonment for a term of not less than ten years or to a fine not less than ten million shillings, or both. 2. Where a body corporate, including a partnership, is charged with an offence under this section and the body corporate is convicted, the company and each officer of the company or partnership are each liable to a fine not less than ten million shillings. 3. Where an unincorporated body of persons is convicted under this section, the principal officers of the body of persons, whatever name called, shall be deemed to have also committed the offence and are each liable to a fine not less than ten million shillings. |
| Prohibition of sex reassignment prescriptions or procedures. | 1. (1) No person shall provide or participate in the provision of sex reassignment prescriptions or procedures that are intended to create a sex other than the biological sex of the person observed and assigned to the person at birth. 2. No person shall entice, indoctrinate or coerce a child to take or undertake sex reassignment prescriptions or procedures that are intended to create a sex other than the biological sex of the child observed and assigned to the child at birth 3. A person who contravenes the provisions of subsection (1) commits an offence and is liable upon conviction to imprisonment for a term of not less than ten years. 4. In addition to subsection (2), a medical practitioner who engages in any of the practices prohibited under this section or who causes such practices to be performed shall have his licence revoked by the body charged with regulation of the medical profession. 5. In this section, the term “sex reassignment prescriptions or procedures” means a prescription or procedure that includes— 6. the prescription or administration of puberty blockers or other chemicals for the purpose of attempting to stop or delay normal puberty to affirm a person’s perception of his or her sex if that perception is inconsistent with the person’s sex as defined in this Act; 7. the prescription or administration of hormones or hormone antagonists or other chemicals to affirm a person’s perception of his or her sex if that perception is inconsistent with the person’s sex as defined in this Act; or 8. any medical procedure, including a surgical procedure to affirm a person’s perception of his or her sex if that perception is inconsistent with the person’s sex as defined in this Act. 9. In this section, the term “sex reassignment prescriptions or procedures” does not include— 10. prescriptions or procedures for individuals born with a genetically or biochemically verifiable disorder of sex development, including, but not limited to, XX disorder of sex development or XY disorder of sex development, sex chromosome disorders, XX or XY sex reversal and ovotesticular disorders; 11. prescriptions or procedures to treat an infection, an injury, a disease, or a disorder that has been caused or exacerbated by the performance of any sex-reassignment prescription or procedure, regardless of whether such prescription or procedure was performed in accordance with the law; or 12. prescriptions or procedures provided to a patient for the treatment of a physical disorder, physical injury, or physical illness that would, as certified by a medical practitioner licensed under the Medical Practitioners and Dentists Act, place the individual in imminent danger of death or impairment of a major bodily function without the prescription or procedure. |
| Disclosure of information. | 1. (1) A person who has any information that is relevant in —    1. preventing the commission of an offence under this Act; or    2. securing the arrest or prosecution of another person for an offence committed under this Act,   shall disclose the information to a police officer.   * + 1. A person in whose presence an offence under this Act is committed shall report the commission of the offence to a police officer.     2. A person who knows or reasonably suspects that a person has committed or intends to commit an offence under this Act shall report the matter to the police.     3. A person who is otherwise prevented by privilege from making a report under this section shall be immune from any action arising from the disclosure of information without the consent or waiver of privilege first being obtained or had.     4. A person who knowingly or having reason to believe that a person has committed or intends to commit an offence and fails to disclose information or report an offence to the police under this Act commits an offence and is liable upon conviction to a fine of not less than twenty thousand shillings or to imprisonment for a term not less than six months, or both.   (6) No civil or criminal proceedings shall be instituted against a person for disclosing any information under this section.  (7) This section shall not apply to an Advocate under the Advocates Act. |
| Arrest by citizens | 1. A person other than a police officer, acting alone or with others, may arrest or cause to be arrested without warrant any person who is in the act of committing an offence under this act or anyone he has reasonable grounds for suspecting to be committing an offence under this act; and, without unreasonable delay, shall make over or cause to be made over any person so arrested to a police officer or to the nearest police station. |
| Children’s right to education.  Rights of Parents to education of their children  Prohibition of comprehensive sexual and reproductive health and education and comprehensive sexuality education | **PART IV- PROTECTION OF CHILDREN**   1. (1) Every child has the right to free and compulsory basic education.    * 1. The State shall ensure that technical and professional education is made generally available and higher education shall be equally accessible to all on the basis of merit.      2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms, to promote understanding, tolerance, peace and friendship among all communities, racial or religious groups. 2. (1) Parents shall have a prior right to choose the kind of education that shall be given to their children.    * 1. The State shall uphold and respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with the parents’ own convictions. 3. (1) The Cabinet Secretary responsible for basic education and the Kenya Institute of Curriculum Development shall ensure that the basic education curriculum shall not— 4. adopt, incorporate, implement or teach comprehensive sexual and reproductive health and education (CSRHE) including sexual health, reproductive health, reproductive rights and universal access to sexual and reproductive health-care services; 5. adopt, incorporate, implement or teach comprehensive sexuality education (CSE) including teaching and instructing children on sexual pleasure and masturbation; autonomous sexual rights for children, reproductive rights, contraception, abortion and access to abortion services to children without parental information and consent; sex work and prostitution; homosexuality, same sex marriages, sexual orientation and gender identity; transgenderism, homophobia and transphobia; 6. contain material or information that teaches or normalizes sexual activity or behavior among or with children; 7. contain instruction on human reproduction or sexually transmitted diseases that is not age appropriate; 8. include training or instruction that espouses, advances, inculcates or indoctrinates a learner to believe in sex change; 9. encourage classroom teaching, discussion, instruction or presentation of unnatural sexual or same sex relationships;   (2) The Cabinet Secretary responsible for matters relating to education shall issue policies or procedures that prohibit registration of learners using pronouns that do not conform to the sex of the learner.  (3) A basic education institution and the medical services provider in a school shall—   1. notify a parent or guardian of the institution’s health services relating to human sexuality, contraception or family planning available at the institution; 2. inform and seek a parent’s or guardian’s consent before offering health services relating to human sexuality, abortion, contraception or family planning to a child.   (4) Every institution of basic education shall—   1. provide separate sex-specific toilets, bathrooms, shower rooms, locker rooms, dormitories for children different sexes; 2. protect the privacy rights of learners including the right to use the facilities designated for a learner’s sex, not to be viewed in a state of undress, whether wholly or partially, by other persons and not be compelled to undress, whether wholly or partially, in the presence of persons of the opposite sex; 3. ensure that sporting events shall be organized to facilitate fair competition among learners of the same sex. 4. build and provide education facilities that are child, disability and sex sensitive or for exclusive use of different sexes and provide safe, non-violent and effective learning environments – sex sensitive facilities.   (5) The body responsible for development and review of the education curriculum in Kenya shall review and update, as necessary, school counseling frameworks and standards, teacher practices and professional conduct principles and any other personnel guidelines, standards, or frameworks in accordance with the requirements of this Act. |
| Promotion of prohibited activities to a child.  No. 3 of 2006.  No. 29 of 2022. | 1. (1) A person who produces, procures, markets, broadcasts, disseminates, publishes or distributes material for purposes of promoting an activity prohibited under this Act to a child, whether directly or indirectly by dissemination to a child of any material, information, education or health services that promotes, induces, condones or normalizes a prohibited activity under this act with the intent to evoke the interest of the child in such activity commits an offence and is liable upon conviction to imprisonment for a term not less than ten years or to a fine of not less than ten million shillings, or both.   (2) The owner of a media, technological platform or technological account, electronic device on which the material or information in subsection (1) is circulated is deemed to have committed an offence unless it is proved that the owner did not know, consent to, aid or abet the commission of the offence and exercised the degree of reasonable diligence as ought in the circumstances to have been exercised to prevent the commission of the offence.  (3) In addition to the provisions of the Sexual Offences Act and the Children Act, a person shall not expose a child to pornography including advertising, selling, hiring or letting, distributing, displaying, showing or offering to a child any prohibited material under this Act.  (4) Where a body corporate, including a partnership, is charged with an offence under this section and the body corporate is convicted, the company and each officer of the company or partnership shall each be liable to a fine of not less than ten million shillings.  (5) Where an unincorporated body of persons is convicted under this section, the principal officers of the body of persons, whatever name called, shall be deemed to have also committed the offence and are each liable to a fine not less ten million shillings.  (6) A person shall not be convicted of an offence pursuant to subsections (3) and (4) where it is proved to the satisfaction of the court that—   1. the person did not consent to, or did not connive at, the commission of the offence; or 2. the person exercised the degree of reasonable diligence as ought in the circumstances to have been exercised to prevent the commission of the offence. |
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| Prohibition of child grooming | 1. (1) A person who -   (a) recruits, transports, transfers, harbours or receives a child for purpose of engaging the child in homosexuality or any other conduct prohibited under this Act;  (b) displays, distributes or supplies, to a child, any material, demonstrating, depicting or illustrating a sexual act between persons of the same sex or any other conduct that is prohibited under this Act;  (c) shows or avails a child a picture, video or film showing, depicting or illustrating a sexual act between persons of the same sex or any other conduct that is prohibited under this Act, or  (d) in the presence of a child, performs a sexual act with a person of the same sex or causes another person to engage in a sexual act with a person of the same sex, commits an offence and is liable, on conviction—   1. in the case of contravention of paragraph (a), to imprisonment for life; or 2. in the case of contravention of paragraphs (b), (c) and (d), to imprisonment for a period not exceeding twenty years.   (2) The consent of a child or that of the child’s parent, guardian, person in authority or any other person with parental responsibility over the child to the acts prescribed in subsection (1) shall not be defence to a charge under this Act. |
| Prohibition of child pornography | 1. (1) Any person who for the purpose of or by way of trade or for the purpose of distribution or public exhibition, makes, produces or has in his or her possession any one or more lewd, indecent or obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph -films or any other material of child pornography or sexual abuse commits an offence and is liable, upon conviction to a fine of not less than fifty thousand shillings or imprisonment for a term of not less than one year, or to both such fine and imprisonment.    * 1. An internet service provider who knowingly acts as a host for child pornographic material or acts as a channel to transmit child pornographic material to a user commits an offence and is liable, upon conviction to a fine of not less than ten million shillings and each officer of the company or partnership, is each liable to a fine not less than ten million shillings or imprisonment for a term of not less than ten years, or to both fine and imprisonment herein.      2. The Communication Authority of Kenya shall take measures to cause to be inaccessible, within Kenya, websites that act as hosts for child pornographic material or channels for the transmission of child pornography images. |
| Disqualification of offenders from acting as guardians, adopting, fostering children etc.  No. 29 of 2022. | 1. In addition to the provisions under the Children Act, the Court, the National Council for Children Services or the Secretary of Children Services, as the case may be, shall not approve an application, or issue an order of adoption, guardianship, kinship, foster care, temporary shelter, aftercare or any other form of family based alternative child care contemplated under the Children Act to an applicant who is convicted of an offence under this Act or who openly holds out or identifies as a homosexual or as a person who engages in unnatural sexual activity or acts prohibited under this Act. |
| Monitoring of child care institutions.  No. 29 of 2022. | 1. In addition to the provisions of the Children Act, the Secretary of Children Services shall ensure — 2. regular inspection of child care institutions, every six months or such sooner period as may be necessary; 3. monitoring of the wellbeing of every child admitted into a private child care institution;   to ascertain and report on whether the child or children residing in the said institutions have been or are being exposed to activities, materials or acts prohibited in this Act. |
| Disqualification of convicts from employment in child care institutions | 1. A person who is convicted of the offence of homosexuality or aggravated homosexuality shall be disqualified from employment in a child care institution or in any other institution which places him or her in a position of authority or care of a child or a vulnerable person until such a time as a probation, social and welfare officer shall determine that the person is fully rehabilitated or no longer poses risk to a child or other vulnerable person. |
| Disclosure of sexual offences record | 1. (1) A person convicted of an offence under this Act shall disclose the conviction when applying for employment in a child care institution or any other institution which places him or her in a position of authority or care of a child or any other vulnerable person.   (2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a period not exceeding two years and the employment of that person shall terminate. |
| Protection of victims of prohibited sexual act. | 1. A victim of a sexual act or activity prohibited under this Act shall not be arrested, prosecuted or punished for involvement in the sexual activity or act. |
| Compensation of victims. | 1. (1) A person involved in the investigation, prosecution or trial of offences under this Act shall assist the victim of the offence present his or her views and concerns at the appropriate stages of the criminal proceedings.    * 1. The Court may order a person convicted of an offence under this Act to, in addition to the sentence imposed, pay compensation to the victim of the offence for any physical or psychological harm caused to the victim.      2. In determining the amount of compensation to be paid by the convicted person, the Court, shall take into consideration— 2. the extent of harm suffered by the victim; 3. the degree of force used on the victim; and 4. medical and other expenses incurred by the victim on approved medical treatment as a result of the offence.    * 1. The order referred to in subsection (2) shall be deamed to be a decree under the Civil Procedure Act, and shall be executed in the manner provided under that Act. |
| Confidentiality.  No 29 of 2022. | 1. (1) At any stage of the investigation or trial of an offence under this Act, law enforcement officer, judicial officer, prosecutor, medical practitioner and any party to the case shall respect and uphold the victim’s right to privacy.   (2) The proceedings of the court—   1. shall be held in accordance with the provisions of section 93 of the Children Act in respect of proceedings concerning a child; 2. may be held in camera where the court considers it appropriate.   (3) A person who reveals the identity of a victim without authority or consent, commits an offence and is liable on conviction to imprisonment for a term of not less than five years or a fine of not less than one million shillings, or to both. |
| Access to emergency medical care and treatment.  Rehabilitation | 1. (1) A victim of a prohibited sexual activity is entitled to emergency medical care and treatment.   (2) The Court may, in addition to the order of compensation made under section 22, determine whether the victim of an offence under this Act requires to undergo psychotherapy and order for payment of fees for the approved service provider and associated costs to be borne by the offender.   1. (1) The Court may, upon convicting a person for the offence under this Act in addition to such penalty as may be imposed, order the provision of social services for the purposes of rehabilitating a convicted person or victim.   (2) The services referred to in subsection (1) may be provided by the prison services or by a probation officer of the area where the convicted person is serving his or her sentence or where the victim resides. |
|  | **PART IV- LIMITATION OF RIGHTS AND FUNDAMENTAL FREEDOMS** |
| Conditions for limitation of rights and fundamental freedoms. | 1. (1) The purpose of this Part is to specifically limit or restrict certain rights or fundamental freedoms set out in Chapter Four of the Constitution, as contemplated in Article 24 of the Constitution.   (2) The limitations of rights and fundamental freedoms under this Part are necessary to achieve and secure the objects of the Act as set out in section 3 and to protect the family to ensure—   1. the protection of the wellbeing of the individual, the family and the nation for the benefit of future generations; 2. the protection of public safety, order, health and morals; 3. the sanctity and honor of families is maintained and preserved; 4. protection of victims: children, persons with disability, older members of the society, the youth and vulnerable persons from harmful sexual exploitation and indoctrination; 5. that persons who would otherwise engage in acts or activities prohibited herein do not prejudice the rights and fundamental freedoms of others. |
| Limitation of the right to privacy. | 1. (1) Pursuant to Article 24 of the Constitution, the right to privacy set out in Article 31 of the Constitution including the right of every person not to have their person, home or property searched, or their possessions seized, or to have information relating to their private affairs unnecessarily required or revealed; in respect to a person, group, society, association, club, organization, or body, whether corporate or unincorporated, whose purpose whether wholly or partly, overtly or covertly, directly or indirectly is to promote, facilitate, support or sustain an act prohibited under this Act shall be limited where the search, seizure or information is required or necessary for purposes of investigations under this Act.   (2) In order for the limitation under subsection (1) to apply, the person shall have committed an offence or be suspected to have committed an offence under this Act. |
| Limitation of the freedom of conscience, religion, belief and opinion. | 1. (1) Pursuant to Article 24 of the Constitution, the right to freedom of conscience, religion, belief and opinion set out in Article 32 of the Constitution shall be subject to limitation to the extent of opinions and beliefs relating to acts prohibited under this Act.   (2) Nothing contained in or done under the authority of this Act shall be held to be inconsistent with or in contravention of freedom of conscience, religion, thought, belief and opinion set out in Article 32 of the Constitution if that act is reasonably done—   1. in the interests of public order or public morality; and 2. for the purpose of protecting the rights and freedoms of other persons from prejudice by the acts or activities prohibited in this Act. |
| Limitation of freedom of expression. | 1. Pursuant to Article 24 of the Constitution, the freedom of expression set out in Article 33 of the Constitution including the freedom to seek, receive, or impart information or ideas and freedom of artistic creativity is limited under this Act to protect the rights and freedoms of other persons in so far as the information, ideas, or artistic creativity relate to the acts and activities prohibited under this Act. |
| Limitation of freedom of the media. | 1. (1) Pursuant to Article 24 of the Constitution, despite the freedom of independence of electronic, print and all types of media, the state may limit the broadcasting, production, circulation or dissemination of any material or publication that promotes material, acts or activities prohibited under this Act.   (2) The Communications Authority of Kenya may, review, vary, modify or revoke any licence granted under the Kenya Information and Communications Act to a media enterprise that knowingly broadcasts or disseminates information or material prohibited under this Act. |
| Limitation of the right of access to information. | 1. Pursuant to Article 24 of the Constitution, the right of access to information under Article 35 of the Constitution including the right of access to information held by the state; and information held by another person shall be limited in respect of information relating to materials, acts or activities prohibited under this Act. |
| Limitation of the freedom of association. | 1. (1) Pursuant to Article 24 of the Constitution, the right to freedom of association under Article 36 of the Constitution including the right to form, join or participate in the activities of an association shall be subject to limitation with respect to a group, society, association, club or organisation whose purpose whether partly, overtly, or covertly, is to promote, facilitate, support or sustain an act prohibited under this Act.   (2) A person shall not directly or indirectly—   1. form, organise, operate or register; 2. promote the formation, organization, operation or registration; or 3. participate in an activity to support or sustain,   a group, society, association, club or organisation whose purpose whether partly, overtly, or covertly, is to promote, facilitate, support or sustain an act prohibited under this Act.  (3) A person who contravenes subsection (2) commits an offence and is liable upon conviction to imprisonment for a term not less than three years.  (4) No group, society, association, club or organization bearing the name or name “homosexual”, “lesbian”, “gay”, “bisexual”, “transgender”, “queer’, ‘questioning’, whether in full or abbreviated, shall be registered in Kenya.  (5) A certificate of registration issued before the coming into force of this Act to any group, society, association, club or organisation whose purpose whether partly, overtly or covertly, directly or indirectly, is to promote, facilitate, support or sustain in any way an act prohibited under this Act, shall stand automatically revoked upon the coming into force of this Act. |
| Limitation of the right to assemble, demonstrate, picket and petition. | 1. (1) Pursuant to Article 24 of the Constitution, the right to assemble, demonstrate or present petitions to public authorities under Article 37 of the Constitution shall be limited with respect to assembly, demonstration, parade or petition by a person, group, society, association, club or organisation whose purpose whether wholly or partly, overtly or covertly, directly or indirectly is to promote, facilitate, support or sustain an act or activity prohibited under this Act.   (2) A person who assembles, demonstrates, pickets, or petitions to promote, facilitate, support or sustain an act or activity prohibited under this Act commits an offence and is liable upon conviction to imprisonment for a term not less than five years. |
|  | **PART V- MISCELLANEOUS PROVISIONS** |
| Refugees and asylum seekers convicted under this Act. | 1. Pursuant to the provisions of section 19 of the Refugees Act, a refugee or asylum seeker convicted under this Act may be expelled from Kenya by an order of the Cabinet Secretary responsible for matters relating to refugee affairs for engaging in a prohibited act under this Act, irrespective of whether the conduct is linked to his or her claim for asylum or not. |
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| Consequential amendments. | 1. The Acts specified in the Schedule are amended in the manner specified in that Schedule. |

**SCHEDULE (s.35)**

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|  | **CONSEQUENTIAL AMENDMENTS** |
| Repeal of section 162 of Cap. 63. | * + - 1. The Penal Code is amended by repealing section 162. |
| Repeal of section 163 of Cap. 63. | * + - 1. The Penal Code is amended by repealing section 163. |
| Repeal of section 165 of Cap. 63. | * + - 1. The Penal Code is amended by repealing section 165. |
| Repeal of section 181 of Cap. 63. | * + - 1. The Penal Code is amended by repealing section 181. |
| Amendment of Section 72 of No. 25 of 2013. | * + - 1. Section 72 of the Sports Act is amended by inserting the following new paragraph immediately after paragraph (a)—   (aa) prescribing the categorisation of sporting events based on sex including eligibility for participation to facilitate fair competition among persons of the same sex. |

**MEMORANDUM OF OBJECTS AND REASONS**

**Statement on Objects and Reasons of the Bill**

The principal object of the Bill is to advance the provisions of Article 45 of the Constitution, to provide for the protection of the family, prohibition and criminalization of homosexuality, same sex marriages, unnatural sexual acts and related activities that are contrary to public morality and to provide for the regulation of activities or associations that seek to advance, advocate or promote homosexuality, unnatural sexual acts and non-binary sexual liaisons.

Kenya is committed to nurture and protect the wellbeing of the family as the natural and fundamental unit of society as espoused in the preamble to the Constitution.

**Part I (clauses 1-3)** of the Bill provides for the preliminary matters including interpretation of terms and objects of the Act.

**Part II (clauses 4-16)** of the Bill provides for prohibited activities and sexual activities under the Act. These include sexual activities among persons of the same sex, same sex marriage, unnatural sexual activities while the prohibited activities include procuring of prohibited sexual activities by false pretences, detention with the intent to commit prohibited sexual activity among others.

This part also makes it an offence to establish premises for prohibited sexual activity, and prohibits grossly indecent acts. It prohibits sex reassignment prescriptions or procedures and the promotion or funding of prohibited activities and proposes to heavily penalize any breach including hefty fines, long jail terms, deregistration of associations and cancellation of licences issued to businesses that promote or host prohibited activities within their premises. It also provides for the duty of witnesses to committal of an offence to disclose information to police and permits citizen arrest.

**Part III** **(clauses 16-24)** deals with the protection of victims ofsexual abuse and children. It proposes prohibition of sex reassignment prescriptions and procedures in children and imposes hefty deterrent penalties as well as prohibiting indoctrination or luring of children into homosexuality. It seeks to prescribe the contents of the education curriculum with respect to reproductive health education. Further measures for protection of children include prohibition of child grooming and child pornography and disqualification of offenders from employment in schools and child care facilities and proposes that such persons be ineligible for adoption or acting as guardians or foster parents.

The provisions further include compensation of victims, guaranteeing of the right to privacy, requirements for confidentiality and entitlement of victims to access medical care and treatment.

**Part** **IV (clauses 25-32)** of the Bill provides for limitation of rights and fundamental freedoms under Chapter four of the Constitution of Kenya, 2010 as required under Article 24. In particular, it limits the right to privacy under 31, right to freedom of conscience, religion, belief and opinion, freedom of expression under Article 32, freedom of expression under Article 33, freedom of the media under Article 34, access to information under Article 35, freedom of association under Article 36 and the right to assembly, demonstration and petition under Article 37, to the extent provided for under Article 24 of the Constitution. In addition, it provides for automatic revocation of any registered groups, associations or societies that promote activities and sexual acts prohibited under the Act.

**Part V** **(clauses 25-3)** contains miscellaneous provisions that allow the expulsion of refugees and asylum seekers who breach the law, contains provisions for psychotherapy and rehabilitation of offenders and consequential amendments to other Acts of Parliament.

**Statement on the Delegation of Legislative Powers and limitation of fundamental rights and freedoms**

The Bill does not delegate legislative powers but it seeks to limit rights and fundamental freedoms in the Bill of Rights.

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

The Bill concerns county governments in terms of Article 110(1) (a) of the Constitution as it contains provisions that affect the powers and functions of county governments. In particular, part 2 of the Fourth Schedule to the Constitution lists the control of pornography as a function of the county governments under paragraph 13.

**Statement on whether the bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the ..........................................................................................................., 2023.

George Peter Kaluma

*Member of Parliament.*

*Section 162 of Cap 63 which it is proposed to repeal*—

**162. Unnatural offences**

Any person who—

(a)  has carnal knowledge of any person against the order of nature; or

(b)  has carnal knowledge of an animal; or

(c)  permits a male person to have carnal knowledge of him or her against the order of nature,

is guilty of a felony and is liable to imprisonment for fourteen years:

Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if—

(i)  the offence was committed without the consent of the person who was carnally known; or

(ii)  the offence was committed with that person’s consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act.

*Section 163 of Cap 63 which it is proposed to repeal*—

**163. Attempt to commit unnatural offences**

Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years.

*Section 165 of Cap 63 which it is proposed to repeal*—

**165. Indecent practices between males**

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.

*Section 181 of Cap 63 which it is proposed to repeal*—

**181. Traffic in obscene publications**

(1) Any person who—

1. for the purpose of or by way of trade or for the purpose of distribution or public exhibition, makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects, or any other object tending to corrupt morals; or
2. for any of the purposes above mentioned imports, conveys or exports, or causes to be imported, conveyed or exported, any such matters or things, or in any manner whatsoever puts any of them in circulation; or
3. carries on or takes part in any business, whether public or private concerned with any such matters or things, or deals in any such matters or things in any manner whatsoever, or distributes any of them, or exhibits any of them publicly, or makes a business of lending any of them; or
4. advertises or makes known by any means whatsoever, with a view to assisting the circulation of or traffic in any such matters or things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured either directly or indirectly; or
5. publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals,

is guilty of a misdemeanour and is liable to imprisonment for two years or to a fine of seven thousand shillings.

(2) If, in respect of any of the offences specified in paragraphs (a), (b), (c) and (d) of subsection (1), any constituent element thereof is committed in Kenya, such commission shall be sufficient to render the person accused of such offence triable therefore in Kenya.

(3) A court, on convicting any person of an offence against this section, may order to be destroyed any matter or thing made, possessed or used for the purpose of that offence.

(4) A court may, on the application of the Director of Public Prosecutions, the Solicitor-General, a State Counsel or a Superintendent of Police, order the destruction of any obscene matter or thing to which this section relates, whether any person may or may not have been convicted under this section in respect of the obscene matter or thing.

*Section 72 of No. 25 of 2013 which it is proposed to amend­*—

**72. Regulations**

The Cabinet Secretary may make regulations—

(a) generally for the better carrying into effect the provisions of this Act; and

(b) prescribing anything that may be prescribed under this Act.