

NOTES ON THE SUPPRESSION OF TERRORISM BILL, 2003

INTERNATIONAL CONVENTIONS ON TERRORISM

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963;
2. Convention for the Suppression of unlawful Seizure of Aircraft, done at The Hague on 16 December 1970;
3. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971;
4. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;
5. International Convention against the taking of Hostages, adopted at Vienna on 3 March 1980;
6. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;
7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988;
8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988;
10. Convention on the Marking of Plastic Explosives for the Purposes of Detection, signed at Montreal on 1 March 1991;
11. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997; and
12. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999 (Not yet in Force).

LAWS OF KENYA, THE PENAL CODE, CHAPTER 63

EXISTING PROVISIONS OF THE PENAL CODE, CAP 63 LAWS OF KENYA THAT COULD BE ENHANCED BY AMENDMENTS TO PROVIDE FOR ADEQUATE LEGISLATION ON TERRORISM WITHOUT ENACTING A SEPARATE LEGISLATION ON TERRORISM

(PAGE 1 OF 4)

USEFUL PROVISIONS CONTAINED IN THE PENAL CODE, CAP 63 LAWS OF KENYA		
SECTION	DISCRIPTION	CONSEQUENCES
20	Principal Offenders	Enabling, aiding, abetting or counselling an offender to obtain the same punishment as the offender
21	Joint offenders in prosecution of common purpose	Common intention to prosecute an offence in conjunction with one another to result in each offender held liable for the whole act.
22	Counselling another to commit offence	Counsel to commit offences unlawful whether or not it is done in the manner counseled
23	Offences by corporations, societies, etc	Individuals managing or directing corporate bodies charged with offences to be liable for the offences.
25	Sentence of Death	Death Sentence provided for.
26	Imprisonment	Imprisonment provided for, including imprisonment with hard labour
26A	Recommendation of removal from Kenya	Provides for the removal of offenders from Kenya upon conviction in offences either through the court after appeal or under Section 8 of the Immigration Act through the Minister responsible for immigration
27	Corporal punishment	Provides for corporal punishment
28	Fines	Fines provided for.
29	Forfeiture	Forfeiture provided for under specified sections
30	Suspension or forfeiture of right to carry on business	Prohibition of convicted persons from carrying on or being concerned in any such trade or business as from which the offence arose
31	Compensation	Compensation to victims by the offender provided for
32	Costs	Convicted persons may be ordered to pay the costs of and incidental to the prosecution
33	Security for Keeping the peace	Provides for a peace bond of upto one year
34	Recognizances	Provides for warrants of arrest for failing to observe the conditions of recognizances
36	General punishment for misdemeanours	Provides for punishment with or without a fine.
37	Sentence when cumulative	Consecutive sentences provided for.
38	Sentence on escaped convict	Immediate execution of sentence upon an escape convict to accrue, and consecutive or concurrent sentences to take effect
39	Cancellation or suspension of certificate of competency	Provides for the cancellation of driving licences upon conviction for certain crimes.

**EXISTING PROVISIONS OF THE PENAL CODE, CAP 63 LAWS OF KENYA THAT PROVIDE FOR OFFENCES WHICH COULD BE ENHANCED BY AMENDMENTS TO PROVIDE FOR ADEQUATE LEGISLATION ON TERRORISM WITHOUT ENACTING A SEPARATE LEGISLATION ON TERRORISM
(PAGE 2 OF 4)**

OFFENCES RELEVANT TO TERRORISM CONTAINED IN THE PENAL CODE, CAP 63 LAWS OF KENYA			
SECTION	OFFENCE	DISCRIPTION	PUNISHMENT
40(1)(a)(iii)	Treason	Compassing, imagining, inventing, devising or intending to overthrow the government by unlawful means	Death
40(2)	Treason	Levying war in Kenya, adhering to enemies of Kenya, instigating invasion of Kenya	Death
42	Concealment of Treason	Accessory after the fact to treason, failure to disclose information	Life imprisonment
43	Treasonabe felony	Commission by foreigners of acts that would amount to treason if committed by Kenyans	Life imprisonment
43A	Treachery	Assisting the enemy to interfere with public order	Life imprisonment
44	Promoting warlike undertaking	Carryin on, aiding in, counselling for or preparing for any war or warlike undertaking	Life imprisonment
47	Inciting to mutiny	Inciting members of disciplined forces to mutiny	Life imprisonment
48	Aiding, etc to mutiny or inciting sedition or disobedience	Aiding or being an accessory to mutiny	Life imprisonment
60	Administration of unlawful oaths to commit capital offences	Administering or engament in the nature of an oath binding a person to commit an offence punishable by death	Death
61	Administration of unlawful oaths to commit other offences	Administering or engament in the nature of an oath binding a person to commit certain offences	10 years imprisonment
62	Compelling another person to take an oath	Use of physical force, threatening or intimidating another to take oath or engagement in the nature of an oath	10 years imprisonment
65	Unlawful drilling	Training or drilling persons to the use of armsor the practice of military excercises, movements or evolutions	7 years imprisonment
89	Possession of firearms, etc	Unlawful possession of firearms, ammunition, explosives, etc intended for use prejudicial to public order	5 years imprisonment
139	Rape	Unlawful carnal knowledge of a woman or girl without her consent	Life imprisonment
203	Murder	With malice aforethought, causing the death of another	Death
202	Manslaughter	Causing the death of another by an unlawful act	Life imprisonment

**EXISTING PROVISIONS OF THE PENAL CODE, CAP 63 LAWS OF KENYA THAT PROVIDE FOR OFFENCES WHICH COULD BE ENHANCED BY AMENDMENTS TO PROVIDE FOR ADEQUATE LEGISLATION ON TERRORISM WITHOUT ENACTING A SEPARATE LEGISLATION ON TERRORISM
(PAGE 3 OF 4)**

OFFENCES RELEVANT TO TERRORISM CONTAINED IN THE PENAL CODE, CAP 63 LAWS OF KENYA			
SECTION	OFFENCE	DISCRIPTION	PUNISHMENT
222	Accessory after the fact of murder	Accessory after the fact of murder	Life imprisonment
224	Conspiracy to murder	Conspiring with any other person to kill a person in Kenya or elsewhere	14 years
225	Aiding suicide	Procuring, counselling or aiding a person to kill himself	Life imprisonment
233	Intentionally endangering safety of persons travelling by railway	Placing anything on railway, shooting or throwind anything, showing lights or signal or omission endangering the safety or person(s) travelling by railway	Life imprisonment
234	Grevious harm	Doing grievous harm to another	Life imprisonment, corporal punishment
235	Attempting to injure by explosive substances	Unlawfully putting explosive substances in any place with intent to harm another	14 years imprisonment
236	Maliciously administering poison with intent to harm	Unlwafully causing poison or noxious thing to be adminstered or taken by another person with intent to harm	14 years imprisonment
237	Unlawful wounding or poisoning	Wounding another or causing poison or other noxious thing to be administered or taken by another with intent to harm	5 years, corporal punishment
254 & 257	Kidnapping from Kenya	Conveying a person beyond the limits of Kenya without his consent	7 years imprisonment
255 & 258	Kidnapping and abduction in order to murder	Kidnapping or abducting a person in order that the person may be murdered	10 years imprisonment
259	Kidnapping or abduction with intent to confine	Kidnapping or abducting a person to be secretly and wrongfully confined	7 years imprisonment
260	Kidnapping to subject to greivous harm	Kidnapping or abducting in order that a person may be subjected to grievous harm	10 years imprisonment
308	Preparation to commit a felony	Being armed with any dangerous weapons indicating an intent to commit a felony	Not less than 10 and not more than 14 years imprisonment with corporal punishment and hard labour
332	Arson	Unlawfully setting fire to property including buildings, vessels, mines, etc	Life imprisonment
333	Attempts to commit arson	Attempting to commit arson or wilfully setting fire to anything situated such that it is likely to cause fire to another thing near it	14 years imprisonment
336	Casting away vessels	Wilfully and unlawfully distressing, endangering or destroying vessels	14 years imprisonment
339 (1)	Malicious injuries to property	General malicious damages to property	5 years imprisonmen

**EXISTING PROVISIONS OF THE PENAL CODE, CAP 63 LAWS OF KENYA THAT PROVIDE FOR OFFENCES WHICH COULD BE ENHANCED BY AMENDMENTS TO PROVIDE FOR ADEQUATE LEGISLATION ON TERRORISM WITHOUT ENACTING A SEPARATE LEGISLATION ON TERRORISM
(PAGE 4 OF 4)**

OFFENCES RELEVANT TO TERRORISM CONTAINED IN THE PENAL CODE, CAP 63 LAWS OF KENYA			
SECTION	OFFENCE	DISCRIPTION	PUNISHMENT
339(2)	Malicious injuries to property	Malicious damage to dwelling houses and vessels by explosive substances	Life imprisonment, corporal punishment
339(3)	Malicious injuries to property	Malicious damage to waterways, infrastructure, etc	Life imprisonment
340	Attempts to destroy property by explosives	Unlawfully and with intent to destroy or damage property putting any explosive substances in any place	14 years imprisonment
343	Sabotage	Wilfully and unlawfully imparing the usefulness or efficiency of any property used or intended for use by the government, or for transport, electricity air or water service essential to a community of persons	Life imprisonment where the offence is intended to endanger life; and 5 years imprisonment in any other case
344	Threats to burn, etc	Sending, delivering, uttering, directly or indirectly causing any letter or writing threatening to burn or detroy anything	7 years imprisonment
393	Conspiracy to commit felony	Conspiring with another to commit any felony, whether in or out of Kenya	7 years imprisonment
394	Conspiracy to commit misdemeanour	Conspiring with another to commit a misdemeanour whether or not in Kenya	2 years imprisonment
395	Other conspiracies	Other conspiracies to do unlawful things are misdemeanours	2 years imprisonment
397	Punishment of accessories after the fact to felonies	Being an accessory after the fact to a felony is a felony	3 years imprisonment
398	Punishment of accessories after the fact to misdemeanours	Being an accessory after the fact to a misdemeanour is a misdemeanour	2 years imprisonment

UNDERSTANDING THE SUPPRESSION OF TERRORISM BILL, 2003
A COMPREHENSIVE ANALYSIS OF THE CONTENT AND CONSTITUTIONALITY OF THE PROPOSED SUPPRESSION OF TERRORISM BILL, 2003
By Wangui Mbatia
(PAGE 1 of 2)

A COMPARATIVE ANALYSIS OF THE SUPPRESSION OF TERRORISM BILL, 2003 WITH REFERENCE TO THE CONSTITUTION OF KENYA		
SECTION OF THE CONSTITUTION OF KENYA	FUNDAMENTAL RIGHT OR FREEDOM GUARANTEED BY THE CONSTITUTION OF KENYA	SECTIONS OF THE SUPPRESSION OF TERRORISM BILL, 2003 THAT ARE INCONSISTENT WITH THE RIGHT AS GUARANTEED BY THE CONSTITUTION
Section 70	Fundamental rights and freedom of the individual without discrimination any basis	
Section 71	Protection to right to life: No person to be deprived of life intentionally save in execution of the sentence of a court in respect to a criminal offence under the law of Kenya	3(2),
Section 72	Protection of right to personal liberty:	30(1)
Section 72(2)	Right of arrested or detained person to be informed of the reasons for the arrest or detention as soon as reasonably practicable	30(1)
Section 72(3)	Right of arrested or detained person to be brought before court within 24 hours of the arrest in non-capital offences and within 14 days for capital offences	30(1)
Section 72(4)	Right not to be held in custody in connexion with the same proceedings after being brought to court	30(1)
Section 72(5)	Right of an arrested or detained person to unconditional release if not tried on time	30(1),
Section 72(6)	Right of an unlawfully arrested or detained person to compensation from the other person	
Section 74	Protection from inhuman treatment including torture, inhuman or degrading punishment or other treatment	30(1)
Section 75	Protection from deprivation of property	19(1), 21(7), 22(2), 25(2)(c), 34(1), 34(5), 36(5), 40(4),
Section 75(2)	Right of a person whose property has been compulsorily taken of direct access to the High Court for determination of entitlement to compensation and obtaining prompt payment of that compensation	21(8)(b),
Section 76	Protection against arbitrary search or entry	2(3)(b), 12(2)
Section 77	Provisions to secure protection of the law: right to fair and speedy trial	9, 18(3)(a), 19(2), 19(2), 20(1), 20(3), 21(1), 21(4), 22(7), 22(8), 22(9), 34(1),
Section 77(2)(a)	Right to the presumption of innocence until proven guilty beyond a reasonable doubt	6(1), 12(1), 20(1), 22(10), 24(1)(b), 29(3),
Section 77(2)(b)	Right to be informed of the offence with which one is charged in a language one understands	30(1)

THE CONSTITUTIONALITY OF THE PROPOSED SUPPRESSION OF TERRORISM BILL, 2003

(PAGE 2 of 2)

A COMPARATIVE ANALYSIS OF THE SUPPRESSION OF TERRORISM BILL, 2003 WITH REFERENCE TO THE CONSTITUTION OF KENYA		
SECTION OF THE CONSTITUTION OF KENYA	FUNDAMENTAL RIGHT OR FREEDOM GUARANTEED BY THE CONSTITUTION OF KENYA	SECTIONS OF THE SUPPRESSION OF TERRORISM BILL, 2003 THAT ARE INCONSISTENT WITH THE RIGHT AS GUARANTEED BY THE CONSTITUTION
Section 77(2)(a)	Burden of proof to rest with the prosecution	4(6), 6(2), 6(3), 7(3), 10(2), 11(4), 16(3), 18(4), 29(3), Clause 4 of 2 nd Schedule,
Section 77(2)(c)	Right to adequate time and facilities for the preparation of one's defence	30(1)
Section 77(2)(d)	Right to legal counsel for defence	30(2)
Section 77(2)(e)	Right to examine in person witnesses against the accused	9(3), 21(6), 34(1), 34(2)
Section 77(2)(f)	Right to an interpreter if one cannot understand the language at the trial of the charge	34(1)(a)
Section 77	Right to be personally present at the trial	34(1)(a), 34(4)
Section 77(3)	Right of the accused to a copy of the judgement and any record of the proceedings	34(1)(a),
Section 77(4)	No retrospective actions or punishments	24(2),
Section 77(5) &(6)	Protection from double jeopardy	
Section 77(7)	Protection from self-incrimination	2(3)(b)(i), 2(4), 20(3)(c),
Section 77(8)	Offences to be defined and penalty therefor prescribed in a written law	3, 4(1)(c), 4(2)(c), 6(1), 8(2), 10(1), 11(6), 12(1), 14(1), 15(1), 15(2), 16(1), 16(2), 17(1), 29(1), 29(2), 29(5), 32(1), 32(2), Clause 6 of 2 nd Schedule,
Section 77(15)	Definition of a 'criminal offence' as an offence under the laws of Kenya	3, 8(1)(b), 34(1), 34(2), 34(4),
Section 78	Protection of freedom of conscience	10(1),
Section 79	Protection of freedom of expression	12(1),
Section 80	Protection of freedom of assembly and association	10(1),
Section 81	Protection of freedom of movement: right of Kenyan citizens to enter Kenya, and immunity from expulsion from Kenya	31(1), 31(3), 37(2),
Section 82	Protection from discrimination on the grounds of race, etc	
Section 83	Derogation from fundamental rights and freedom: limitation of fundamental rights and freedoms only when Kenya is at war	9, 30, 31, 34,
Section 84	Enforcement of protective provisions: Right of a person to apply to the High Court for redress where fundamental rights and freedoms have been or are about to be contravened.	30, 31, 34