

OFFENCES AGAINST PUBLIC ORDER

- They include
 - i) Treason
 - ii) Prohibited publication
 - iii) Unlawful assembly and riot

1. TREASON

- Section 40, Penal Code:

40. (1) Any person who, owing allegiance to the Republic, in Kenya or elsewhere -

- (a) compasses, imagines, invents, devises or intends -
 - (i) the death, maiming or wounding, or the imprisonment or restraint, of the President; or
 - (ii) the deposing by unlawful means of the President from his position as President or from the style, honour and name of Head of State and Commander-in-Chief of the Armed Forces of the Republic of Kenya; or
 - (iii) the overthrow by unlawful means of the Government; and
- (b) expresses, utters or declares any such compassings, imaginations, inventions, devices or intentions by publishing any printing or writing or by any overt act or deed, is guilty of the offence of treason.

(2) Any person who, owing allegiance to the Republic –

- (a) levies war in Kenya against the Republic; or
- (b) is adherent to the enemies of the Republic, or gives them aid or comfort, in Kenya or elsewhere; or
- (c) instigates whether in Kenya or elsewhere any person to invade Kenya with an armed force, is guilty of the offence of treason.

- Section 40 (3), Penal Code: Punishment for treason is death

Actus reus

- Owing allegiance
- imagining, devising or intending the death, wounding, imprisonment or overthrowing by unlawful means of the president
- Such imaginations, intentions or devices must be expressed by some overt act such as in printing, writing, or any act.

Mens rea

- Depending on the circumstances, especially taking account the acts of treason any form of intention suffices

Offences related to treason

- ***Misprison of treason:*** Section 42, Penal Code: Concealing treason either as an accessory after the fact or failure to give information to authorities before the fact makes one guilty of the felony termed misprison of treason and is liable to imprisonment for life.
- ***Treasonable felony:*** Section 43, Penal Code: Any person who, not owing allegiance to the Republic, in Kenya or elsewhere, commits any act or combination of acts which, if it were committed by a person who owed such allegiance, would amount to

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the offence of treason under section 40, is guilty of a felony and is liable to imprisonment for life.

- **Treachery:** Section 43A, Penal Code: Any person who, with intent to help the enemy, does any act which is designed or likely to give assistance to the enemy, or to interfere with the maintenance of public order or the government of Kenya, or to impede the operation of the disciplined forces, or to endanger life, is guilty of a felony and is liable to imprisonment for life.
- **Promoting warlike undertakings:** section 44, Penal Code: Any person who, without lawful authority, carries on, or makes preparation for carrying on, or aids in or advises the carrying on of, or preparation for, any war or warlike undertaking with, for, by or against any person or body or group of persons in Kenya, is guilty of a felony and is liable to imprisonment for life.

The republic v Ibrahim Adan (1983) They were convicted for unlawful assembly and riot but they appealed and were set free.

Mombasa Republican counsel

Discuss the TJ Kajwang case, Raila Swearing in as the people's president

Conditions on trial of treason

- Section 45 (1), Penal Code: to commence within two years after the offence is committed
- Section 45 (2), Penal Code: convicted only arises in two instances: either on a plea of guilty or on evidence in an open court of 2 witnesses at least to one overt act of treason or alleged offence
- Section 45 (2)A, Penal Code: If the facts or matters alleged in a charge for any of such felonies amount in law to treason, and such acts or matters alleged are proved at trial, such a person shall not be acquitted of the felony, but the person tried for the felony shall not afterwards be prosecuted for treason upon the same facts.
- Section 45 (2)B, Penal Code: A person charged with treason or related offences can be taken to custody or tried in any place in Kenya
- Section 45 (3) These conditions do not apply to cases in which the overt act of treason alleged is the killing of the President, or a direct attempt to endanger the life or injure the person of the President.

2. PROHIBITED PUBLICATION

- Section 52 of the Penal Code
- (1) Where the Minister, on reasonable grounds, considers that it is necessary in the interests of public order, health or morals, the security of Kenya, and to be reasonably justifiable in a democratic society, the Minister may, by order published in the Gazette, prohibit the importation of any publication.
- Section 52 (2): the minister can also declare such publication to be prohibited publication

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- Section 52 (3), Penal Code: the Prohibited Publications Review Board, to review prohibited publications and advise on whether such prohibition should be lifted; to also advise the minister generally on the exercise of his powers under this section
- Penalty for prohibited publications: imprisonment for a term not exceeding three years

3. UNLAWFUL ASSEMBLY AND RIOT

- Section 78 (1), Penal Code:
‘When three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace,’

- It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner described above. (section 78 (2))
- When an unlawful assembly has begun to execute the purpose for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled. (Section 78 (3))
- Any person who takes part in an unlawful assembly is guilty of a misdemeanour and is liable to imprisonment for one year. (Section 79)

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