



**Strathmore University**

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**Law School**

**CRIMINALISATION OF ATTEMPTED SUICIDE: AN EXAMINATION OF  
SECTION 226 OF THE KENYAN PENAL CODE**

Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree,  
Strathmore University Law School

By

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## Declaration

I, **MUKUHA FIONA WAITHIRA**, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:  .....

Date: 13<sup>th</sup> December, 2024



This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:  .....

Dr. Antoinette Kankindi  
13<sup>th</sup> December 2024

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## **List of Legal Instruments**

Constitution of Kenya (2010).

Succession Act (CAP 160 of 2022).

The Penal Code, 2023 Amendment.

Universal Declaration of Human Rights, 1948.



## List of Cases

*Agnew v Belfast Banking Co.* (1896), The United Kingdom House of Lords.

*Beatrice Ngwasi Kyusa v Republic* (2016) eKLR.

*Elijah Murimi Mithamo v Republic* (2020) eKLR.

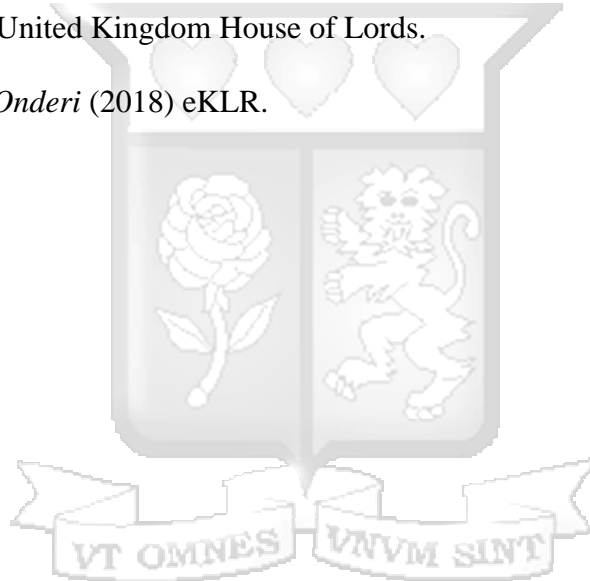
*Felix Hamisi David v Republic/Odpp* (2024) eKLR.

*Franklin Munene Mbae v Republic* (2013) eKLR.

*Kiprop Kerich Ezra v Republic* (2021) eKLR.

*Re:Dudman* (1925), The United Kingdom House of Lords.

*Republic v Paul Otongo Onderi* (2018) eKLR.



## List of Abbreviations

COK – Constitution of Kenya

WHO – World Health Organisation



## Abstract

*Over 800,000 individuals commit suicide every year worldwide with a majority ranging between 15 and 29 years. Kenya is not an exception, with a rate of eleven for every 100,000 inhabitants. The Kenyan Penal Code criminalises suicide as a felony, with Section 226 which considers attempted suicide as a misdemeanour. There is literature stating that a significant number of people who commit suicide, or attempt to commit suicide, have mental health problems as a result of issues that they have faced in life. In basis of such situations, the World Health Organisation (WHO) has developed a comprehensive mental health action plan, aligned to the United Nations Sustainable Development Goal, of reducing the global suicide rate by one third by 2030. In 2023, WHO, in compliance with the action plan adopted a policy brief proposing to decriminalise suicide and suicide attempts. According to the organisation, the challenge faced by the goal of reducing global suicide mortality is the fact that suicide and suicide attempts remain illegal in at least twenty-three countries. For instance, Section 226 of the Kenyan Penal Code punishes the attempted suicide with 2 years' imprisonment and payment of a fine, or both. The aim of this study is to establish whether the existing laws can be harmonised with international standards in terms of reducing the global suicide mortality rates, the global health action plan by WHO and the recently adopted policy on attempted suicide. The study will use doctrinal research methodology to explore the existing legal framework, such as domestic legislation and international instrument. It will also examine the courts' application of the legal framework in matters of suicide and attempted suicide. The Interpersonal psychological theory and the Durkheim theory will be applied as theoretical frameworks to analyse the existing laws on attempted suicide as a crime, where recommendations to the law will be made after critical analysis of the same.*

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# CHAPTER ONE: INTRODUCTION

## 1.1 Background

Suicide is a complicated issue that happens due to a mix of psychological, social, biological, and environmental factors present in an individual's life.<sup>1</sup> It's one of the leading causes of death among young people in many countries, including Kenya although there hasn't been enough policy and research investment in preventing it.<sup>2</sup> It ranks amongst the top 10 leading causes of death for people aged 15 to 29 years.<sup>3</sup> For attempted suicide, the WHO in 2014 stated that it is 20 times more frequent than completed suicide.<sup>4</sup>

This law, like many others in Kenya, was adopted from the English common law. However, up until 64 years ago, attempted suicide ceased to be law as it was amended in the English jurisdiction.<sup>5</sup> The amendment was prompted by expert analysis which argued that unlike the high-profile cases fuelling recent debates on assisted suicide, there was no substantial demand for legislative reform. Instead, it became increasingly clear that care was preferable to prosecution, as existing laws no longer reflected societal beliefs.<sup>6</sup> This shift in belief was driven by a growing tolerance and a softening of public attitude, which were influenced by the liberalisation of the medical profession.<sup>7</sup>

A study was conducted in Ghana where psychologists generally regarded suicide as a mental health issue, emphasising a compassionate and empathetic approach toward individuals at risk, and focused on suicide prevention from a health-service perspective.<sup>8</sup> They identified mental health

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<sup>1</sup> Kerkhof A, 'Suicide and attempted suicide' World Health Organisation, March to April 1994, <https://iris.who.int/bitstream/handle/10665/326991/WH-1994-Mar-Apr-p18-20-eng.pdf>, March to April 1994.

<sup>2</sup> Ministry of Health Kenya, 'Suicide prevention strategy 2021-2026: National Strategy for implementation by all stakeholders to prevent suicide and promote mental wellbeing' 4 January 2021, 10.

<sup>3</sup> Parliament of Kenya, 'Committee in health urged to propose changes to law to decriminalise attempted suicide' <http://parliament.go.ke/node/21513#:~:text=Section%20226%20of%20Kenya's%20penal%20code%20stipulates%20that%20any%20person,set%20at%20eight%20years%20old> on 6 March 2024.

<sup>4</sup> World Health Organization, *Preventing suicide: A global imperative*, 17 August 2014, 7.

<sup>5</sup> Section 1, *Suicide Act English* (1961).

<sup>6</sup> Holt G, 'When suicide was illegal' BBC news, 3 August 2011 <https://www.bbc.com/news/magazine-14374296> > on 2 October 2021.

<sup>7</sup> Wright D, 'Histories of suicide: International perspectives on self-destruction in the modern world' 1 ed University of Toronto Press, Toronto, 2008, 91-118.

<sup>8</sup> Osafo J, Knizek BL, Akotia CS and Hjelmeland H, 'Attitudes of psychologists and nurses toward suicide and suicide prevention in Ghana: a qualitative study' 49 *International Journal of nursing studies* 6, 2012, 691-700.

education and enhancements in primary health care as practical strategies for preventing suicide.<sup>9</sup> In contrast, the nurses tended to adopt a moralistic view of suicide as a crime, perceiving those who attempt it as culpable, and approached suicide prevention from a more prohibitive standpoint.<sup>10</sup>

As of 2021, Kenya has seen a rise in suicide and attempted suicide rates, with a number of almost five hundred people reported to have taken their own lives in the months of April to June. This was more than the number recorded in the whole year of 2020, showing a drastic increase in the numbers over the period.<sup>11</sup> The Kenya National Human Rights Commission revealed that attempted suicide ranks as the second highest category of cases, surpassed only by murder, within the homicide category.<sup>12</sup> In 2020, a Mental Health Taskforce was established following a cabinet directive from the President, recognizing mental health as a key priority in both public health and socioeconomic agendas.<sup>13</sup>

The primary mandate of the taskforce was to study the status of mental health in Kenya, its related determinants and contributing risk factors. The findings by the taskforce showed that 13% of all diseases in the country are mental in nature. Given the major obstacles that exist, such as stigma and restricted access to mental health treatments in communities, some people resort to suicide as a means of escape for those with unmet mental health needs.<sup>14</sup> This can be shown in a Kenyan case law from 2013 in which Frankline, the accused, was charged with attempted suicide. Regarding

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<sup>9</sup> Osafo J, Knizek BL, Akotia CS and Hjelmeland H, 'Attitudes of psychologists and nurses toward suicide and suicide prevention in Ghana: a qualitative study,' 691-700.

<sup>10</sup> Osafo J, Knizek BL, Akotia CS and Hjelmeland H, 'Attitudes of psychologists and nurses toward suicide and suicide prevention in Ghana: a qualitative study,' 691-700.

<sup>11</sup> Muiruri P, 'Concern grows in Kenya after an alarming rise in suicide cases' The Guardian, 10 August 2021. <https://www.theguardian.com/global-development/2021/aug/10/concern-grows-in-kenya-after-alarming-rise-in-suicide-cases> on 10 August 2021.

<sup>12</sup> Kabiru D, 'The world suicide prevention day 'working together to prevent suicide'' Kenya National Human Rights Commission, 10 September 2020, <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1106/The-World-Suicide-Prevention-Day-%E2%80%9CWorking-Together-To-Prevent-Suicide> on 10 September 2020.

<sup>13</sup> Ministry of Health, 'Mental health taskforce urges government to declare mental health a national disaster, 7 July 2020 <https://mental.health.go.ke/mental-health-taskforce-report-urges-government-to-declare-mental-health-a-national-emergency/> on 7 July 2020.

<sup>14</sup> Kabiru D, 'The world suicide prevention day 'working together to prevent suicide'' Kenya National Human Rights Commission, 10 September 2020, <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1106/The-World-Suicide-Prevention-Day-%E2%80%9CWorking-Together-To-Prevent-Suicide> on 10 September 2020.

the latter, it was determined that he had violated section 226 of the penal code, and he received a two-year prison sentence from the magistrate court.<sup>15</sup>

In line with the action plans made by the WHO and developed policy briefs as part of the United Nations sustainable development goals, there would be a need to examine the law and determine whether it should be in harmonisation with international standards. This includes Section 226 as an evaluation of its sustenance to the individual's well-being in light of protection of human rights in determining whether there is more harm than good.

With the indicated rise in suicide rates in Kenya, the evaluation of this provision could be taken as a step towards its prevention and reduction in numbers. This is in line with the goals of the WHO at the frontline advocating for the decriminalisation of suicide and attempted suicide laws.

## **1.2 Statement of problem**

Suicide and attempted suicide are still crimes in Kenya, despite many other countries having followed the WHO plans to decriminalise them. If Kenya adopts the action plans and policies set forth by the WHO, then suicide laws should be revised to align with these objectives. This study seeks to investigate whether there is ground for implementing the WHO policy or whether Kenya has reasons to maintain Section 226 provision in place.

## **1.3 Aim of the study**

The purpose of this study is to determine whether current laws can be aligned with international standards to reduce global suicide mortality rates. This is in accordance with the WHO Global Health Action Plan and the recently adopted policy on attempted suicide formulated as part of the sustainable development goals to be achieved by 2030.

## **1.4 Research Objectives**

This study seeks to achieve the following objectives:

1. To examine the legal framework on suicide and attempted suicide and its implications

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<sup>15</sup> *Frankline Munene Mbae v Republic* (2013) eKLR.

2. To analyse jurisprudence on the justification around ethical implications for and against criminalisation of attempted suicide.
3. To present the findings and make recommendations.

### **1.5 Research Questions**

This study delves into whether there needs to be a reform on the law regarding section 226 of the Penal Code. Thus, there remain crucial questions regarding the decriminalisation of attempted suicide. To address this gap, this study seeks to answer the following research questions:

1. Why does Kenyan domestic law persist in criminalising suicide and attempted suicide laws despite the WHO's policies recommending decriminalising them?
2. What kind of jurisprudential standards have been set by the courts in the interpretation of matters regarding suicide and attempted suicide laws?

### **1.6 Hypothesis**

The decriminalisation of suicide and attempted suicide can lead to the achievement of the WHO action plan. This forms part of the sustainable development goals aiming to reduce global rates of suicide and attempted suicide by 2030. It could enhance public health outcomes by shifting the focus from punitive measures to mental health support.

### **1.7 Justification**

In the current legal framework, there exists a gap between domestic laws and international standards regarding suicide and attempted suicide as crimes. The need to harmonise these laws and international standards aiming to reduce the global suicide and attempted suicide rates is what justifies this study. The harmonisation is required by action plans as part of sustainable development goals to be achieved by 2030 is what justifies this study.

## 1.8 Theoretical framework

The Interpersonal psychological theory is propounded by Thomas Joiner.<sup>16</sup> It states that there are three key components that contribute to suicide risk: perceived failed belongingness, perceived burdensomeness, and acquired capability for suicide.<sup>17</sup> He integrates these components to explain why some individuals become seriously suicidal, showing the interplay between social influences and personal experiences.<sup>18</sup> While the theory effectively emphasises the role of social isolation and disconnection in suicide risk, some scholars suggest a more nuanced approach, incorporating sociological perspectives to address the complexities of suicidal behaviour.<sup>19</sup> This theory is particularly relevant for analysing how social disconnection contributes to increased suicide risk.<sup>20</sup> The criticism of the theory is made by Knizek and Hjemeland arguing that it is overly simplistic and reductionist as it attempts to explain a complex phenomenon using only three internal psychological factors. They conclude that the approach fails to account for the broader contextual and cultural factors that influence suicidal behaviour.<sup>21</sup>

Emile Durkheim propounds the Durkheim theory, stating that suicide has underlying causes and meanings often tied to broader social forces rather than isolated personal moments.<sup>22</sup> He proposes that suicidal tendencies emerge in vulnerable individuals due to prolonged life circumstances or societal pressures.<sup>23</sup> His sociological perspective emphasised understanding suicide as a social phenomenon influenced by external factors, fostering a compassionate and systemic approach to prevention.<sup>24</sup> The theory is criticised by Anna Mueller et al who question the definition of suicide, who argue stating that suicide death is caused by social facts excludes the real reason for committing suicide.<sup>25</sup> Further, that his approach was influenced by the intellectual context of his

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<sup>16</sup> Joiner T, 'Why people die by suicide' *Harvard Univeristy Press*, 2005.

<sup>17</sup> Kral M, 'Thomas Joiner, why people die by suicide' 47 *Transcultural Psychiatry* 3, 2010, 1.

<sup>18</sup> Kral M, 'Thomas Joiner, why people die by suicide,' 2.

<sup>19</sup> Kral M, 'Thomas Joiner, why people die by suicide,' 3.

<sup>20</sup> Kral M, 'Thomas Joiner, why people die by suicide,' 3.

<sup>21</sup> Hjemeland H and Knizek B, 'The emperor's new clothes? A critical look at the interpersonal theory' 44 *Norwegian University of Science and Technology* 3, 2020, 2 and 10.

<sup>22</sup> Travis R, 'Halbwachs and Durkheim: A test of two theories of suicide' 41 *The British Journal of Sociology* 2, 1990, 2.

<sup>23</sup> Travis R, 'Halbwachs and Durkheim: A test of two theories of suicide,' 2.

<sup>24</sup> Travis R, 'Halbwachs and Durkheim: A test of two theories of suicide,' 2.

<sup>25</sup> Mueller A, Abrutyn S, Pescosolido B and Diefendorf S, 'The social roots of suicide: Theorising how the external social world matters to suicide and suicide prevention' 12 *Frontiers in Psychology* 1, 2021, 3.

era.<sup>26</sup> As sociology was an emerging discipline, he aimed to establish it as separate from psychology and anthropology. Consequently, he avoided incorporating concepts such as identity and emotions into his work.<sup>27</sup>

## **1.9 Literature review**

This section explores the existing literature on analysis of suicide and attempted suicide laws in Kenya and globally. It investigates what scholars have said and the arguments that have been made for and against these provisions. Each of them describes the importance of addressing this issue to change or maintain this law.<sup>28</sup> The literature shows some movements that have happened leading to the decriminalisation of suicide and attempted suicide, as well as the justification for the reluctance to amend these laws in some jurisdictions.

### ***1.9.1 For the decriminalisation of attempted suicide and suicide laws***

Otieno Oduor argues that the criminalisation of attempted suicide infringes on the right to health under Article 43(1) of the Constitution of Kenya (COK).<sup>29</sup> This is because, Section 226 of the Kenyan Penal code infringes on the right to health where every citizen is entitled to the highest form of health care as is provided for in the Universal Declaration of Human Rights.<sup>30</sup> Furthermore, he states that mental health is one of the root causes of attempted suicide as it is taken as a last resort of escape.<sup>31</sup>

Kwaku Asante et al, analysed the decision made by the members of parliament in Ghana leading to the decriminalisation of suicide and attempted suicide laws. The rising suicide rates in the country have drawn significant attention, prompting a study that analysed comments from 11 MPs recorded in the Parliamentary Hansards between 2017 and 2020.<sup>32</sup> The study focused on their

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<sup>26</sup> Mueller A, Abrutyn S, Pescosolido B and Diefendorf S, 'The social roots of suicide: Theorising how the external social world matters to suicide and suicide prevention,' 4.

<sup>27</sup> Mueller A, Abrutyn S, Pescosolido B and Diefendorf S, 'The social roots of suicide: Theorising how the external social world matters to suicide and suicide prevention,' 4.

<sup>28</sup> Ochieng' J and Waithaka L, 'Critical analysis of section 226 of Kenya Penal Code: A case for urgent reform' 6 *International Peer Reviewed Journal and Book Publishing* 3, 2021, 3.

<sup>29</sup> Article 43, *Constitution of Kenya* (2010).

<sup>30</sup> Article 25(1) *Universal declaration of Human Rights*, 1948.

<sup>31</sup> Otieno O, 'Decriminalization of attempted suicide in Kenya: Research on how criminalization of attempted suicide infringes on the right to health', Published LLB dissertation, Kabarak University, Nakuru, 2022,17-24.

<sup>32</sup> Quarshie E, Asante K, Arthur J, Akotia C and Osafo J, 'To keep the law or to repeal it; views of parliamentarians on the call to decriminalise attempted suicide in Ghana' 89 *Sage Journals* 1, 2021, 40.

positions regarding two parliamentary motions advocating for the decriminalisation of attempted suicide. MPs debated whether the anti-suicide law acts as an effective deterrent or is counterproductive, with differing opinions on its enforcement and whether the focus should be on decriminalisation or broader mental health and suicide prevention efforts.<sup>33</sup> The authors recommend improving suicide literacy among MPs, initiating legislative steps toward decriminalisation, and engaging with various stakeholders in the mental health field.<sup>34</sup> The study underscores the need for a more informed and compassionate legislative approach to mental health in Ghana, calling for a shift in the legal and social perception of attempted suicide.<sup>35</sup>

Ochieng and Waithaka conducted a quantitative research with the findings that there are a number of reasons that contribute to attempted suicide.<sup>36</sup> These include interpersonal and relationship problems where there has been a conflict or as a result of unmet personal and societal problems, financial and economic difficulties such as the loss of income and unemployment, mental health conditions and the influence of religious and cultural beliefs, particularly in Kenya's Coastal region.<sup>37</sup> They recommend enhancing access to counselling services and support groups, providing mental health awareness training and skills, and implementing measures to restrict access to means of suicide.<sup>38</sup>

This research argues that there is an interconnectedness in the reasons for suicidal behaviour which pile on to each other resulting to a last resort escape as a consequence of this internal conflicts. These literary reviews find that there is a great need to decriminalise attempted suicide to reduce the stigma around it and assist individuals that are in dire need of it.

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<sup>33</sup> Quarshie E, 'To keep the law or to repeal it; views of parliamentarians on the call to decriminalise attempted suicide in Ghana,' 45-48.

<sup>34</sup> Quarshie E, 'To keep the law or to repeal it; views of parliamentarians on the call to decriminalise attempted suicide in Ghana,' 49 -50.

<sup>35</sup> Quarshie E, 'To keep the law or to repeal it; views of parliamentarians on the call to decriminalise attempted suicide in Ghana,' 51.

<sup>36</sup> Ochieng' J and Waithaka L, 'Critical analysis of section 226 of Kenya Penal Case: A case for urgent reform' 6 *International Peer Reviewed Journal and Book Publishing* 1, 2021, 37-38.

<sup>37</sup> Ochieng' J and Waithaka L, 'Critical analysis of section 226 of Kenya Penal Case: A case for urgent reform,' 37-38.

<sup>38</sup> *Beatrice Ngwasi Kyusya v Republic* (2016) eKLR.

### ***1.9.2 Against the decriminalisation of attempted suicide and suicide laws***

Adinkrah advocates for the criminalisation of attempted suicide where there is an application of two principles. The first is the police power function principle where they have the responsibility of law enforcement to safeguard public welfare and safety by removing dangerous individuals from neighbourhoods. It is imperative that the police fulfil their role of apprehending lawbreakers, regardless of their mental state.<sup>39</sup> The reasoning behind this being that it will sanction other perpetrators from attempting suicide based on the legal consequences that follow after. The second principle is the responsibility of the police to aid people who are in need or unable to help themselves.<sup>40</sup> In cases involving mentally unstable individuals who pose a threat to themselves or others, or where a mentally disturbed suspect is involved in a misdemeanour, police decisions and discretion are primarily influenced by this principle.<sup>41</sup> The author concludes by disagreeing with the decriminalisation of suicide laws terming it as a way to deter other individuals of the society from attempting suicide.<sup>42</sup>

Mishara Brian points out that punishment is commonly viewed as a means of preventing crime or discouraging socially disapproved actions. However, when it comes to punishing suicide attempts, no data supports the notion that the threat of jail serves as an effective deterrent.<sup>43</sup>

Paul Siu Fai et al. states that coded anti-suicide laws have not been effective in deterring suicide at the national level.<sup>44</sup> In fact, countries with such laws, particularly non-Muslim nations, often see higher suicide rates, especially among women. The findings suggest that these laws are built on unsound legal policies, as they not only fail to prevent suicide but also perpetuate stigma and hinder humanitarian approaches to suicide prevention.<sup>45</sup> Successful suicide reduction strategies in other countries have focused on providing comprehensive mental healthcare and addressing the socioeconomic and cultural factors that contribute to suicide. Reducing poverty and shifting

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<sup>39</sup> Engel R, Silver E, 'Policing mentally disordered suspects: A re-examination of the criminalisation hypothesis.' 39 *Criminology* 2, 2022, 225-252.

<sup>40</sup> Ochieng' J and Waithaka L, 'Critical analysis of section 226 of Kenya Penal Case: A case for urgent reform,' 37.

<sup>41</sup> Adinkrah M, 'Anti-suicide laws in nine African countries: Criminalization, prosecution and penalization' 9 *African Journal of Criminology and Justice Studies* 1, 2016, 279-292.

<sup>42</sup> Ochieng' J and Waithaka L, 'Critical analysis of section 226 of Kenya Penal Case: A case for urgent reform,' 38.

<sup>43</sup> Mishara L, 'The legal status of suicide; A global review' 44 *International Journal of law and psychiatry* 1, February 2016, 54-74.

<sup>44</sup> Chang K, Cai Z, Chang Q, Chang S, Yip P and Chen Y, 'Criminalisation of suicide and suicide rates: an ecological study of 171 countries in the world' 22 *BMJ Journals* 1, 2022, 2.

<sup>45</sup> Chang K, 'Criminalisation of suicide and suicide rates: an ecological study of 171 countries in the world,' 7.

cultural attitudes that stigmatise both suicide and seeking help are essential to mitigating suicide risk.<sup>46</sup>

Recent policy changes, such as India and Singapore abolishing criminal penalties for attempted suicide, reflect a growing awareness of the lack of evidence supporting the effectiveness of anti-suicide laws.<sup>47</sup> This divergence raises concerns about distinguishing between suicides that should be prevented and those considered permissible, potentially creating a "moral crisis" and even increasing suicide rates in these regions. Integrating these conflicting legal trends is vital for developing evidence-based and ethically sound suicide prevention policies.<sup>48</sup>

The gap identified in the literature of this study lies in the differing perspectives on the decriminalisation of suicide and attempted suicide laws. While the WHO's policy and action plans advocate for reforming these laws, there is a challenge in balancing public welfare with individual welfare, with the organisation suggesting that prioritising the latter will ultimately achieve the former. This raises the question of why approximately 171 countries have decriminalised these laws, yet Kenya has not followed suit.

### **1.10 Research methodology**

This study will use a doctrinal research methodology. It will generally be desk-based and qualitative in nature. This methodology is essential because it involves locating the sources of the law and the interpretation and analysis of these texts. It allows exclusive study of the law to ensure the achievement of the objectives set out in the research. It will therefore rely on primary sources such as The COK to relay human rights granted to an individual, the various statutes of Kenya such as the Penal Code and case law. The study will also use secondary sources such as books, journal articles and research reports.

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<sup>46</sup> Chang K, 'Criminalisation of suicide and suicide rates: an ecological study of 171 countries in the world,'7.

<sup>47</sup> Chang K, 'Criminalisation of suicide and suicide rates: an ecological study of 171 countries in the world,'7.

<sup>48</sup> Kioussis B and Battin M, 'Physician aid-in-dying and suicide prevention in psychiatry: a moral crisis?' *The American Journal of bioethics* 10, 2019, 29-39.

### **1.11 Research limitations**

The main limitation is time constraints since it must be finished during the fourth year of study. There may not be enough time in this window of opportunity to gather sufficient field data and surveyed samples with the statistical reasons behind them. Nevertheless, ample desk-based research will still be conducted to provide a significant study on the global policy campaigning for the decriminalisation of suicide and attempted suicide.

### **1.12 Chapter Breakdown**

Chapter One will introduce the research topic, the background and the problem statement. It describes the purpose of the study, the questions it aims to answer, its hypothesis, and its reasoning. It is essentially a synopsis of the whole research.

Chapter Two discusses the theoretical and conceptual framework, used to analyse the problem stated.

Chapter Three will interrogate the legal framework on suicide and attempted suicide considering the WHO policies recommending the decriminalisation.

Chapter Four will analyse Kenyan courts jurisprudence on suicide and attempted suicide.

Chapter Five will offer the findings, conclusion and subsequent recommendations of the research.

## CHAPTER TWO: THEORETICAL FRAMEWORK

### 2.0 Introduction

The theoretical framework selected to analyse the criminalisation of suicide and attempted suicide is the Interpersonal psychological theory and the Durkheim theory of suicide. The former propounded by Thomas Joiner and the later by Emile Durkheim discuss the importance of understanding suicide and why individuals may feel a need to do so by specifically focusing on the social factors. They are discussed below.

### 2.1 Interpersonal psychological theory of suicide

The theory is propounded by Thomas Joiner seeking to understand why individuals commit suicide.<sup>49</sup> It presents three key components that contribute to suicidal risk. The first is perceived failed belongingness, which refers to an individual's sense of disconnection from others or the absence of meaningful social relationships.<sup>50</sup> According to Joiner, when people feel they do not belong or lack social integration, it can lead to suicidal thoughts and behaviours.<sup>51</sup> The second component is perceived burdensomeness: the belief that one is a burden to others, feeling ineffective or unable to positively contribute to relationships. Joiner posits that this perception can significantly increase the risk of suicide.<sup>52</sup>

The third element, acquired capability for suicide, was introduced more recently in the theory. It suggests that individuals can develop a fearlessness about death and self-harm through experiences that desensitise them to pain and suffering.<sup>53</sup> This fearlessness can result from exposure to violence, childhood adversity, or repeated suicide attempts. Joiner integrates these components to explain why some individuals become seriously suicidal, emphasising the role of both social influences and personal experiences in shaping suicide risk across various cultures and contexts.<sup>54</sup> Mueller et al discusses this theory and acknowledges its importance in emphasising the critical role of social factors influencing suicidal behaviour. However, he advocates for a more nuanced

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<sup>49</sup> Joiner T, 'Why people die by suicide' 2005.

<sup>50</sup> Kral M, 'Thomas Joiner, why people die by suicide,' 1.

<sup>51</sup> Kral M, 'Thomas Joiner, why people die by suicide,' 1.

<sup>52</sup> Kral M, 'Thomas Joiner, why people die by suicide,' 2.

<sup>53</sup> Kral M, 'Thomas Joiner, why people die by suicide,' 3.

<sup>54</sup> Kral M, 'Thomas Joiner, why people die by suicide,' 3.

approach that incorporates sociological perspectives and methodologies to better understand the complexities of suicidal behaviour.<sup>55</sup>

Joiner's theory, though a psychological one, was selected because it will help analyse the problem by recognising that social isolation and disconnection can lead to increased suicide risk.

## 2.2 The Durkheim theory of suicide

The theory as proposed by Émile Durkheim argues that every suicide has a cause or meaning, with individuals acting on the belief that the act will somehow be fulfilling.<sup>56</sup> He believed that suicidal tendencies arise in vulnerable individuals as a result of long-standing personal circumstances or life events, rather than being triggered by a single moment. According to his theory, suicide reflects broader social forces, with different types of suicides linked to varying levels of societal regulation.<sup>57</sup>

He highlighted two key forms of suicide: anomic suicide and fatalistic suicide. The former occurs when social structures break down, typically during times of upheaval or crisis, leading to feelings of disorientation and disconnection.<sup>58</sup> The latter happens when individuals are subjected to excessive social control, leaving them feeling trapped and hopeless.<sup>59</sup> These cases illustrate how an imbalance in social regulation, whether too little or too much, can severely affect mental well-being and increase the risk of suicide.

His work was instrumental in destigmatising suicide by framing it as a response to societal pressures, rather than merely a moral or criminal act.<sup>60</sup> His sociological perspective emphasised the importance of understanding suicide as a social phenomenon influenced by external factors,

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<sup>55</sup> Mueller A, Abrutyn S, Pescosolido B and Diefendorf S, 'The social roots of suicide: Theorising how the external social world matters to suicide and suicide prevention,' 2.

<sup>56</sup> Travis R, 'Halbwachs and Durkheim: A test of two theories of suicide' 41 *The British Journal of Sociology* 2, 1990,2.

<sup>57</sup> Mueller A, Abrutyn S, Pescosolido B and Diefendorf S, 'The social roots of suicide: Theorising how the external social world matters to suicide and suicide prevention,' 2.

<sup>58</sup> Travis R, 'Halbwachs and Durkheim: A test of two theories of suicide,' 2.

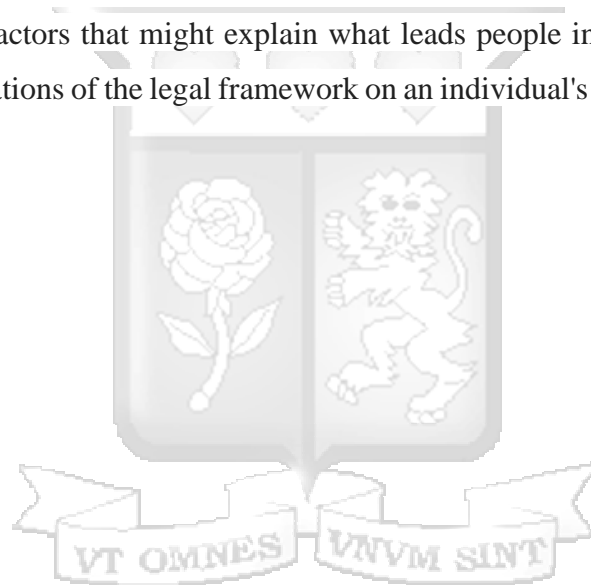
<sup>59</sup> Travis R, 'Halbwachs and Durkheim: A test of two theories of suicide,' 2.

<sup>60</sup> Behere P, Sathyanarayana S, Mulmule N, 'Decriminalisation of attempted suicide law: Journey of fifteen decades' 57 *Indian Journal of Psychiatry* 2, April - June 2015, 122-124.

rather than solely as an individual failure or crime. By doing so, he laid the foundation for a more compassionate, systemic approach to suicide prevention.<sup>61</sup>

Durkheim's theory continues to inform contemporary suicidology, with a focus on how social environments, such as the degree of integration and regulation in one's life, impact suicidal behaviour.<sup>62</sup> His work suggests that the collective environment and relationships play a crucial role in understanding why people take their own lives. In today's discussions, this perspective aligns with movements advocating for mental health awareness and the decriminalisation of suicide, emphasising the need for support and intervention instead of punishment.<sup>63</sup>

Durkheim's is a sociological theory. It is borrowed in this study to analyse a legal problem since it substantiates the social factors that might explain what leads people into choosing suicide. This helps us study the implications of the legal framework on an individual's mental health and societal integration.



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<sup>61</sup> Mueller A, Abrutyn S, Pescosolido B and Diefendorf S, 'The social roots of suicide: Theorising how the external social world matters to suicide and suicide prevention,' 2.

<sup>62</sup> Mueller A, Abrutyn S, Pescosolido B and Diefendorf S, 'The social roots of suicide: Theorising how the external social world matters to suicide and suicide prevention,' 2.

<sup>63</sup> Mueller A, Abrutyn S, Pescosolido B and Diefendorf S, 'The social roots of suicide: Theorising how the external social world matters to suicide and suicide prevention,' 2.

## CHAPTER THREE: THE LEGAL FRAMEWORK ON SUICIDE AND ATTEMPTED SUICIDE

### 3.0 Introduction

The analysis of the legal framework will cover sections of domestic laws and international policies. They include *the Penal Code, the Succession Act, the WHO policy brief and the WHO action plan*. The study analyses the various dimensions of the debate surrounding the criminalisation of suicide and attempted suicide, providing an in-depth examination of the rationale of these laws that govern them.

### 3.1 Kenyan Domestic laws

The COK under Article 28, states that every person has an inherent dignity which is to be respected and protected.<sup>64</sup> Kenya's approach to attempted suicide is shaped by a multifaceted framework of laws, policies, judicial decisions, and prosecutorial discretion.

#### 3.1.1 Section 226 of the Penal code, 2023 Amendment

In examining the historical evolution of the criminalisation of suicide and the subsequent advocacy for decriminalisation by the WHO, it is crucial to recognise the significant impact of colonial legacies and their role in sustaining these laws within Kenya's legal framework. As the subject of analysis for this study, section 226 of the Penal Code makes attempting suicide a crime. According to Section 36 of the *Penal Code*, attempted suicide is now considered a misdemeanour and is subject to fines, 2-year imprisonment, or both.<sup>65</sup>

The colonial era is identified as the source of criminalisation of suicide and attempted suicide in many countries, including Kenya.<sup>66</sup> In these countries, anti-suicide laws were embedded within a wider legal framework established under colonial rule.<sup>67</sup> Although the United Kingdom repealed

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<sup>64</sup> Article 28, *Constitution of Kenya* (2010).

<sup>65</sup> Section 36, *Penal code*, (Act No 19 of 2023).

<sup>66</sup> Sang M. 'The case for decriminalisation of attempted suicide in Kenya: Lessons from comparative experience' 11 *Journal of conflict management and sustainable development* 3, 2024, 192.

<sup>67</sup> Adinkrah M, 'Anti-suicide laws in nine African countries: Criminalization, prosecution and penalization,' 280.

laws criminalising attempted suicide in 1961, a majority its former colonies continue to enforce legal codes on suicidal behaviour, even after gaining political independence.<sup>68</sup>

During the colonial period, Britain introduced codified anti-suicide laws in its territories, which remained in effect until MP Kenneth Robinson, in 1958, tabled a motion arguing that suicide should no longer be treated as a criminal offense.<sup>69</sup> His main argument for this change was the growing tolerance and the softening of the public attitude brought about by the liberalisation of the medical profession.<sup>70</sup> Within days, 150 MPs signed the motion, leading to the law's repeal three years later through the Suicide Act of 1961, which decriminalised both suicide and attempted suicide.<sup>71</sup>

Colonial laws not only criminalised these acts but also established a formal system for investigating suicide cases, fundamentally altering local perceptions and practices around the issue in African societies.<sup>72</sup> In many African communities, suicide was often regarded as a profoundly bad death, one that excluded the individual from joining the spirit world of their lineage.<sup>73</sup> However, attitudes toward suicide varied significantly, even among neighbouring groups. Some communities perceived suicide not as a crime but as an act of bravery.<sup>74</sup> In highly stratified African societies, suicide was sometimes used as a form of reparation for dishonour.<sup>75</sup> An example is the Gisu people of western Kenya who viewed suicide as an evil act, not inherently but due to its association with harmful circumstances, such as strained relationships between individuals or with ancestors.<sup>76</sup> They believed suicide was contagious, where contact with the body was considered

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<sup>68</sup> Adinkrah M, 'Anti-suicide laws in nine African countries: Criminalization, prosecution and penalization,' 280.

<sup>69</sup> Holt G, 'When suicide was illegal' BBC news, 3 August 2011.

<https://www.bbc.com/news/magazine-14374296> on 2 October 2021.

<sup>70</sup> Parliamentary Hansard Report, United Kingdom, 6 February 1958.

<sup>71</sup> Section 1, *Suicide Act English* (1961).

<sup>72</sup> Vaughan M, 'Suicide in late colonial Africa: The evidence of inquests from Nyasaland' 115 *The American Historical Review* 2, 2010, 385-404.

<sup>73</sup> Vaughan M, 'Suicide in late colonial Africa: The evidence of inquests from Nyasaland,' 393.

<sup>74</sup> Vaughan M, 'Suicide in late colonial Africa: The evidence of inquests from Nyasaland,' 393.

<sup>75</sup> Iliffe J, 'Honour in African history' 39 *The international journal of African studies* 2, 2006, 328-330.

<sup>76</sup> Fontaine J, 'Person and individual: Some anthropological reflections' in Michael Carrithers, Steven Collins and Steven Lukes (eds), *The category of the person: Anthropology, philosophy, history*, Cambridge University Press, Cambridge, 1985, 123-141.

highly dangerous.<sup>77</sup> They attributed suicide to ancestral influence, either through inducing shame over antisocial behaviour or by inciting conflicts with close kin, leading to suicide out of anger.<sup>78</sup>

These colonial laws often conflicted with indigenous beliefs from the Africans about death and suicide, and they formalised the investigation of suicide cases through legal processes, which was not customary in many local African societies.<sup>79</sup> While colonial authorities might have perceived suicide as rare among Africans, the legal procedures they implemented did not fully account for local customs or the social significance of suicide. This disconnect led to potential misrepresentations of the issue within African communities.<sup>80</sup>

These laws, which frequently adopted a moralistic stance, viewed suicide as a criminal and morally deviant act. The intent was to deter individuals from engaging in or assisting with suicidal behaviour.<sup>81</sup> The criminalisation of suicide was first entrenched in Kenya's 1930 Penal Code, which mirrored the British legal system at the time. However, while Britain decriminalised suicide in 1961 through the Suicide Act, colonial Kenya did not implement this change. Instead, the law was maintained, and the provisions continued to be enforced through Section 226 of the Penal Code, which specifically made attempted suicide a criminal offense.<sup>82</sup>

Section 226 of the Penal Code, alongside Section 36, establishes that attempted suicide is classified as a misdemeanour in Kenya. Individuals found guilty of attempting suicide may face fines, imprisonment for up to two years, or both. It signifies that suicide attempts are treated as criminal offenses under the law, reflecting an approach that emphasises legal accountability for such actions which include imprisonment, payment of a fine or both. It assigns responsibility to the judiciary to determine appropriate penalties within the framework provided by these sections. The provision is the foundation for the reasoning behind Kenya's continued criminalisation of attempted suicide, as it is the primary law guiding judicial decisions on the matter. It positions Kenya within the group of countries that have retained punitive measures against suicide attempts.

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<sup>77</sup> Fontaine, 'Person and individual: Some anthropological reflections' 123-141.

<sup>78</sup> Fontaine, 'Person and individual: Some anthropological reflections' 123-141.

<sup>79</sup> Vaughan M, 'Suicide in late colonial Africa: The evidence of inquests from Nyasaland,' 393.

<sup>80</sup> Vaughan M, 'Suicide in late colonial Africa: The evidence of inquests from Nyasaland,' 393.

<sup>81</sup> Sang M. 'The case for decriminalisation of attempted suicide in Kenya: Lessons from comparative experience,' 191.

<sup>82</sup> Section 226, *Penal Code* (Act No 19 of 2023).

### 3.1.2 *The Succession Act, CAP 160 2022*

Beyond the Penal Code, the *Succession Act 2022* states that a person found guilty of suicide should have their will discounted in section 31 (f) (i), which invalidates a gift given in contemplation of death by suicide.<sup>83</sup> Section 31 of the *Succession Act* provides for conditions of a gift in contemplation of death which is given during life where the donor transfers the subject matter of the gift to the donee while still alive however, it becomes effective only upon the donor's death.<sup>84</sup> It cannot meet the required conditions if the donor anticipates their own death by suicide where any gift made under such circumstances is rendered invalid.<sup>85</sup>

The rationale behind this law is based on the issue of public policy.<sup>86</sup> These are policies enacted by the state designed to protect its citizens and uphold the public interest.<sup>87</sup> These laws and policies grant the government the authority to halt any actions deemed contrary to the public good. Even if a specific policy does not directly address a particular action, it can still be nullified if it is considered harmful to the public.<sup>88</sup> The case of *Agnew v Belfast Banking* held that that upholding a gift intended to take effect through suicide would be contrary to public policy.<sup>89</sup> In *Re Dudman*, a donor's suicide due to terminal illness led the court to invalidate the gift on public policy grounds, following the precedent set in *Agnew*.<sup>90</sup> While England abolished this position after the Suicide Act, 1961, which decriminalised suicide, Kenya maintains the pre-1961 stance under Section 31 (f) (i) of its *Law of Succession Act*.<sup>91</sup>

This law introduces this provision as a deterrent to suicide, since it reflects a societal desire to protect the value of life and prevent inheritance laws from being exploited for self-harm. However, in the case where the death by suicide happens the gift is not passed to the dependant which creates a gap in how the property will be transferred leading to no benefit of the donee as part of fulfilment of the succession of property.

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<sup>83</sup> Section 31(f)(i), *Succession Act* (CAP 160 of 2022).

<sup>84</sup> Section 31, *Succession Act* (CAP 160 of 2022).

<sup>85</sup> Section 31(f)(i), *Succession Act* (CAP 160 of 2022).

<sup>86</sup> Musyoka W, *Law of Succession*, LawAfrica Publishing, Nairobi, 2010,40.

<sup>87</sup> Black's Law Dictionary, 3 ed.

<sup>88</sup> Black's Law Dictionary, 3 ed.

<sup>89</sup> *Agnew v Belfast Banking Co.* (1896), The United Kingdom House of Lords.

<sup>90</sup> Musyoka W, *Law of Succession*, 40.

<sup>91</sup> Musyoka W, *Law of Succession*, 40.

### 3.2 International policies on suicide and attempted suicide

International law does not directly regulate suicide or attempted suicide, as these matters are generally handled by national legal systems. However, there are international human rights frameworks that influence how countries approach these issues, focusing on the right to life, mental health, and humane treatment.

The WHO has been actively advocating for the decriminalisation of suicide and attempted suicide, launching policy briefs and action plans to enhance suicide prevention measures.<sup>92</sup> Their primary goal is to reduce global suicide rates by at least one-third by 2030, aligning with the United Nations Sustainable Development Goals and the WHO Mental Health Action Plan.<sup>93</sup>

#### 3.2.1 WHO Policy brief

The WHO policy brief states that attempted suicide is influenced by a range of complex and interrelated factors. They include social and economic conditions such as economic instability, unemployment, poverty, and limited access to resources, all of which can lead to feelings of hopelessness and despair, heightening the risk of suicide.<sup>94</sup> While not all individuals with mental health issues will attempt suicide, the likelihood is greater among those experiencing these conditions.<sup>95</sup> It outlines a comprehensive set of policies to address suicide prevention and promote mental health globally. Central to these policies is the advocacy for decriminalising suicide and attempted suicide. Its main aim is to provide guidance on effective preventive strategies to reduce the numbers through understanding of the complexities of suicide.<sup>96</sup> By implementing this, the

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<sup>92</sup> World Health Organisation, WHO launches new resources on prevention and decriminalisation of suicide, 12th September 2023.

<https://www.who.int/news/item/12-09-2023-who-launches-new-resources-on-prevention-and-decriminalization-of-suicide> on 12 September 2023.

<sup>93</sup> World Health Organisation, WHO launches new resources on prevention and decriminalisation of suicide, 12th September 2023.

<https://www.who.int/news/item/12-09-2023-who-launches-new-resources-on-prevention-and-decriminalization-of-suicide> on 12 September 2023.

<sup>94</sup> World Health Organisation, WHO launches new resources on prevention and decriminalisation of suicide, 12th September 2023.

<https://www.who.int/news/item/12-09-2023-who-launches-new-resources-on-prevention-and-decriminalization-of-suicide> on 12 September 2023.

<sup>95</sup> International Association for Suicide Prevention, World Health Organisation launches policy brief on the decriminalisation of suicide and suicide attempts, 14 September 2023

<https://www.iasp.info/2023/09/14/world-health-organization-launches-policy-brief/> on 14 September 2023.

<sup>96</sup> World Health Organisation, WHO policy brief on health aspects of decriminalisation of suicide and suicide attempts, 12 September 2023, 2.

WHO aims to create supportive environments that reduce suicide rates and enhance mental well-being worldwide by 2030.<sup>97</sup>

The brief advocates for the decriminalisation of suicide and suicide attempts, arguing that criminalisation can deter individuals from seeking help. This means that it promotes the idea of supportive environments which are essential for those in crisis, encouraging a switch in how societies view and respond to suicide. It provides recommendations and best practices for governments and policymakers to develop comprehensive suicide prevention strategies. This includes understanding the complex factors contributing to suicide and implementing targeted interventions for vulnerable populations.<sup>98</sup> The brief supports broader global health initiatives, such as the WHO's Comprehensive Mental Health Action Plan and the United Nations Sustainable Development Goals, weighing in on the need for countries to commit to mental health and suicide prevention as part of their public health agendas.

### **3.2.2 WHO Action plan**

The action plan recognises suicide as a critical public health issue, particularly affecting vulnerable and marginalised groups, including young people and the elderly.<sup>99</sup> It notes that suicide rates are often underreported due to weak surveillance systems on various factors, including the misattribution of suicide to accidental deaths and the criminalisation of suicide in some countries.<sup>100</sup> This can create barriers to effective prevention efforts and may discourage individuals from seeking help due to fear of legal repercussions. To effectively address this issue, the action plan advocates for a multisectoral approach involving not only the health sector but also others such as the legal sector.<sup>101</sup>

It emphasises the need for a supportive approach to mental health and suicide prevention, advocating for comprehensive national strategies that focus on raising awareness, reducing stigma, and promoting help-seeking behaviours rather than punitive measures. By addressing the

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<sup>97</sup> World Health Organisation, *WHO policy brief on health aspects of decriminalisation of suicide and suicide attempts*, 12 September 2023,2.

<sup>98</sup> World Health Organisation, *WHO policy brief on health aspects of decriminalisation of suicide and suicide attempts*, 12 September 2023,4.

<sup>99</sup> World Health Organisation, *Comprehensive mental health action plan 2013-2030*, 21 September 2023, 12.

<sup>100</sup> World Health Organisation, *Comprehensive mental health action plan 2013-2030*, 21 September 2023, 12.

<sup>101</sup> World Health Organisation, *Comprehensive mental health action plan 2013-2030*, 21 September 2023, 28.

criminalisation of suicide, the action plan implicitly calls for a shift towards understanding and treating suicide as a public health issue rather than a criminal act.<sup>102</sup>

The action plan serves as a roadmap for countries and organisations to enhance mental health systems and promote mental well-being globally. It aims to create a supportive environment where mental health is prioritised, and individuals can thrive without stigma or discrimination. It encourages a shift from viewing suicide as a criminal act to understanding it as a public health issue. This perspective promotes the idea that individuals who attempt suicide require support and treatment rather than punishment. By framing the issue in this way, the action plan advocates for compassionate and supportive responses to individuals in crisis.

### 3.3 Conclusion

Kenya's legal system continues to criminalise attempted suicide, treating it as a misdemeanour subject to penalties such as fines or imprisonment. This provision has its roots in colonial-era laws, which were introduced under British rule and retained after Kenya's independence. Despite the significant shift in legal attitudes towards suicide in many parts of the world, including the decriminalisation of suicide in the United Kingdom in 1961, Kenya has retained this approach, which may be influenced by concerns about societal values, morality, and public health.

Section 31(f)(i) of the Succession Act embodies Kenya's adherence to public policy principles that prioritise the sanctity of life and discourage actions that may incentivise or normalise self-harm. By invalidating gifts made in contemplation of death by suicide, the law aims to deter such actions while upholding the integrity of inheritance processes. The provision creates challenges, particularly regarding the allocation of assets intended for beneficiaries, which may remain unresolved if the transfer becomes void. This reveals a significant limitation in the legislation, as it neither serves the intended recipient nor establishes a definitive framework for the disposition of such assets, demonstrating a necessity for guidance in determining the allocation of such property in a way that reconciles policy objectives with fair succession.

There is a significant gap between Kenya's legal approach to suicide and international standards advocated by the WHO. While there is retention of colonial-era laws that criminalise suicide and

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<sup>102</sup> World Health Organisation, *Comprehensive mental health action plan 2013-2030*, 21 September 2023, 28.

attempted suicide, the WHO strongly advocates for the decriminalisation of the same focusing on understanding suicide as a public health issue. The WHO's global stance is informed by a growing understanding of suicide as a health crisis that requires a compassionate, multi-sectoral response, incorporating healthcare, legal frameworks, and mental health services.



# CHAPTER FOUR: THE KENYAN COURT JURISPRUDENCE ON SUICIDE AND ATTEMPTED SUICIDE

## 4.0 Introduction

The chapter analyses the jurisprudence surrounding suicide and attempted suicide in Kenya. It will look through cases analysing how the courts have approached the subject and the stance they take in implementing the existing laws. The primary goal is to identify and evaluate the effectiveness of the legal framework with respect to implementation and interpretation of the current laws by the courts in relation to suicide and attempted suicide. The section covers *Franklin Munene Mbae v Republic* (2013), *Felix Hamisi David v Republic/Odpp* (2024), *Elijah Murimi Mithamo v Republic* (2020), *Beatrice Ngwasi Kyusya v Republic* (2016), *Kiprop Kerich Ezra v Republic* (2021), *Republic v Paul Otongo Onderi* (2018) and Magistrate court cases. The selection of these cases is to show the different applications on the arguments provided for and against suicide and attempted suicide.

## 4.1 Jurisprudence against the criminalisation of suicide and attempted suicide

### 4.1.1 *Franklin Munene Mbae v Republic* (2013)

The case is an appeal following the conviction of the appellant, where he pleaded guilty to attempted suicide contrary to Section 226 of the penal code and was sentenced to 2 years in prison.<sup>103</sup> This stemmed from family issues in his relationship with his father, which he stated drove him to complete frustration, ultimately leading to his attempted suicide.<sup>104</sup> The court allowed the appeal on the grounds that the Senior Resident Magistrate erred in law by failing to notice the allegations of bad behaviour against the appellant after only three days of probation.<sup>105</sup> The Magistrate completely disregarded the appellant's statement that his father was driving him to total frustration.

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<sup>103</sup> *Franklin Munene Mbae v Republic* (2013) eKLR.

<sup>104</sup> *Franklin Munene Mbae v Republic* (2013) eKLR.

<sup>105</sup> *Franklin Munene Mbae v Republic* (2013) eKLR.

He also failed to recognise that the appellant was suffering from dysfunctional family conflicts, requiring psychiatric assistance rather than imprisonment.<sup>106</sup> Furthermore, there was also a neglect to inquire into and understand the family conflicts and their possible resolution, instead of blindly accepting the version of events presented by a party against the appellant.<sup>107</sup>

The defence counsel opposed the conviction that had been made and recommended against sentencing when it came up for hearing. He insisted that the appellant entered a guilty plea to the allegation and that his effort to end his own life was an indication of his condition. He argued that the sentence was harsh under the circumstances and that the appellant would not benefit from it.<sup>108</sup> The appeal was contested by the prosecution. He stated that the Probation Officers Report (POR) made it very evident that the appellant was not following prior POR Orders and that family issues were still present.<sup>109</sup> Additionally, he argued that the lower court had taken the factors of his condition into account before concluding that rehabilitation had failed and that separation from family members was required.<sup>110</sup>

The court analysed the arguments made and stated that they have considered the appeal against the sentence including that the appellate had already served one month of the two-year sentence. Consequently, the sentence of two years' imprisonment, without the option of a fine, was unfair, inappropriate, and excessively severe in the circumstances of this case.<sup>111</sup> The court finally ordered that the sentence of the 2 years imprisonment be set aside and replaced with a probation term of 3 years.<sup>112</sup> The appellant must maintain good behaviour, avoid negative influences, undergo probationary guidance and counselling, and comply with the Probation Officer's orders. Failure to do so may result in being brought back to court for an alternative sentence.<sup>113</sup>

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<sup>106</sup> *Franklin Munene Mbae v Republic* (2013) eKLR.

<sup>107</sup> *Franklin Munene Mbae v Republic* (2013) eKLR.

<sup>108</sup> *Franklin Munene Mbae v Republic* (2013) eKLR.

<sup>109</sup> *Franklin Munene Mbae v Republic* (2013) eKLR.

<sup>110</sup> *Franklin Munene Mbae v Republic* (2013) eKLR.

<sup>111</sup> *Franklin Munene Mbae v Republic* (2013) eKLR.

<sup>112</sup> *Franklin Munene Mbae v Republic* (2013) eKLR.

<sup>113</sup> *Franklin Munene Mbae v Republic* (2013) eKLR.

#### ***4.1.2 Elijah Murimi Mithamo v Republic (2020)***

The applicant was convicted for attempted suicide under Section 226 of the Penal Code where he was sentenced to serve one year imprisonment. He was also convicted for a second count of attempted murder contrary to Section 220 of the Penal Code. The trial court convicted the applicant of attempting to kill his minor son, sentencing him to life imprisonment on September 21, 2015.<sup>114</sup> While not contesting his conviction, he had applied for a review of his sentence. He stated that the offence was committed under mental distress caused by prolonged frustration from his wife, a factor he claims the trial court overlooked. He sought the court's consideration of this aspect in reviewing the sentence.<sup>115</sup>

During the hearing, the defence argued that the applicant committed the offence under emotional distress and should have received psychological counselling instead of imprisonment.<sup>116</sup> He contended that the five years already served in prison are sufficient punishment and urged the court to commute the sentence to time served.<sup>117</sup> The prosecutor did not oppose reducing the applicant's sentence but commented on the gravity of the offence, recommending a ten-year prison term. He argued that this duration would provide the applicant with further opportunity for reform while serving his sentence.<sup>118</sup>

The court replaced the applicant's life imprisonment sentence with a three-year non-custodial probation. As a condition of his release, the Applicant must avoid contact with the victim and the victim's mother unless permitted by the probation officer or authorised by the court. During probation, he is required to follow all directions from the probation officer, with any violation resulting in the sentence being converted to imprisonment.

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<sup>114</sup> *Elijah Murimi Mithamo v Republic* (2020) eKLR.

<sup>115</sup> *Elijah Murimi Mithamo v Republic* (2020) eKLR.

<sup>116</sup> *Elijah Murimi Mithamo v Republic* (2020) eKLR.

<sup>117</sup> *Elijah Murimi Mithamo v Republic* (2020) eKLR.

<sup>118</sup> *Elijah Murimi Mithamo v Republic* (2020) eKLR.

#### **4.1.3 *Felix Hamisi David v Republic/Odpp (2024)***

The appellant was charged with two counts of attempted suicide and escape from lawful custody to which he had pleaded guilty. He was sentenced to serve 5 years for attempted suicide and 2 years for escaping custody where they should run consecutively.<sup>119</sup>

The defence argued that Section 36 of the Penal Code prescribes a maximum sentence of two years for a misdemeanour. The charges against the applicant were misdemeanours and should have been sentenced accordingly, in line with Section 36.<sup>120</sup> He further contended that the trial court failed to assess the applicant's mental status and did not obtain a relevant report to aid in determining an appropriate sentence.<sup>121</sup> The applicant's rights under Articles 50(2)(g) and (h) of the COK, which guarantee the right to be informed of the right to legal representation, were violated, infringing upon his right to a fair trial.<sup>122</sup>

The prosecution submitted that the applicant was fit to be sentenced and was not opposed to the decision made by the lower court.<sup>123</sup> The appellate court decided that the magistrate erred in law by not informing him of his right to choose and be represented by an advocate. There was no conduct of a mental assessment report and probation report to confirm the mental status and social life of the appellant.<sup>124</sup> The sentence given was illegal and harsh in view of the circumstances hence, the court set aside the conviction and the sentencing given by the lower court. The appellant was to be taken to another court for a fresh plea-taking before another magistrate.<sup>125</sup>

#### **4.1.4 *Analysis of the cases***

According to Thomas Joiner's theory propounding key factors contributing to suicidal behaviour, the appellant's strained relationship with his father and persistent family conflicts likely fostered a sense of isolation and lack of belonging, illustrating thwarted belongingness.<sup>126</sup> In the *Frankline*

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<sup>119</sup> *Felix Hamisi David v Republic/Odpp (2024)* eKLR.

<sup>120</sup> *Felix Hamisi David v Republic/Odpp (2024)* eKLR.

<sup>121</sup> *Felix Hamisi David v Republic/Odpp (2024)* eKLR.

<sup>122</sup> *Felix Hamisi David v Republic/Odpp (2024)* eKLR.

<sup>123</sup> *Felix Hamisi David v Republic/Odpp (2024)* eKLR.

<sup>124</sup> *Felix Hamisi David v Republic/Odpp (2024)* eKLR.

<sup>125</sup> *Felix Hamisi David v Republic/Odpp (2024)* eKLR.

<sup>126</sup> Kral M, 'Thomas Joiner, why people die by suicide,' 1.

*Munene Mbae v Republic*, the appellant states that his father was driving him to total frustration reflecting perceived burdensomeness, suggesting that he felt worthless and a burden to his family, ineffectively unable to positively contribute to the relationship.<sup>127</sup> The appellant's suicide attempt further indicates the development of acquired capability for suicide, where prolonged mental distress and family tensions may have diminished his fear of death and pain, which is discussed as a major factor leading to attempted suicide.<sup>128</sup>

Durkheim's theory categorising suicide into fatalistic and anomic suicide is applicable in this case, where it coincides with the latter.<sup>129</sup> He defines anomic suicide as a situation in which social structures breakdown typically during times of upheaval or crisis.<sup>130</sup> In *Elijah Murimi v Republic*, court's decision to replace the sentence with probation confirms the theory. It leads to feelings of disorientation and disconnection, reflected in the appellant's inability to navigate the breakdown of family norms and the resulting instability.<sup>131</sup> By emphasising on rehabilitation and probation, the court addressed the psychological and social factors influencing the appellant's behaviour. It fulfils the need for stability and support acknowledged in Durkheim's theory which focuses on a compassionate and systemic approach to suicide prevention.<sup>132</sup>

Kwaku Asante draws on Ghana's experience in debating and decriminalising attempted suicide, emphasising on the importance of moving away from punitive measures. In *Felix Hamisi v Republic* the appellate court's acknowledgment of the procedural errors of failing to conduct a mental assessment, obtain a probation report, or inform the appellant of his right to legal representation reinforces the need for systemic changes. The initial court's harsh sentencing, which exceeded the legal maximum for misdemeanours, reflects a lack of understanding of the appellant's mental state and the principles of proportionality in sentencing. The decision to order a fresh plea-taking highlights the necessity of ensuring procedural fairness and aligning judicial outcomes with constitutional protections, such as the right to a fair trial under Article 50 of the

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<sup>127</sup> Kral M, 'Thomas Joiner, why people die by suicide,' 2.

<sup>128</sup> Kral M, 'Thomas Joiner, why people die by suicide,' 3.

<sup>129</sup> Travis R, 'Halbwarchs and Durkheim: A test of two theories of suicide,' 2.

<sup>130</sup> Travis R, 'Halbwarchs and Durkheim: A test of two theories of suicide,' 2.

<sup>131</sup> Travis R, 'Halbwarchs and Durkheim: A test of two theories of suicide,' 2.

<sup>132</sup> Mueller A, Abrutyn S, Pescosolido B and Diefendorf S, 'The social roots of suicide: Theorising how the external social world matters to suicide and suicide prevention' 2.

COK. This correlates with Asante’s recommendations for a more compassionate and informed approach.

## **4.2 Jurisprudence for criminalisation of suicide and attempted suicide**

### **4.2.1 *Beatrice Ngwasi Kyusya v Republic (2016)***

The appellant was charged with the offence of attempted murder contrary to section 220(6) of the Penal Code and attempted suicide contrary to section 226 of the Penal Code.<sup>133</sup> The particulars of the second offence is that she attempted to take her own life by taking a poison named Diazonol. She was tried and convicted to serve ten years imprisonment on the first count and 2 years imprisonment on the second count.<sup>134</sup>

The appellant in her submission stated that the sentence imposed was harsh and did not take into account certain mitigating factors, including that she is a single mother of seven and her children would require parental care.<sup>135</sup> She also stated that she has recovered from her attempt to take her husband’s life as well as her own and acquired creative skills such as dressmaking, baking and knitting.<sup>136</sup> However, the prosecution argued that the sentencing was not excessive and urged the court to uphold the decision given by the lower court.

The appellate court concluded that, due to the circumstances of the offences committed, the sentence is not excessive or harsh since the lower court in making its decision considered the mitigating factors and the injury inflicted on the former husband.<sup>137</sup>

### **4.2.2 *Kiprop Kerich Ezra v Republic (2021)***

The Petitioner was convicted of murder under Section 203, as read with Section 204 of the Penal Code, and sentenced to death.<sup>138</sup> He had killed his girlfriend by stabbing her in the neck and leaving her locked in her brother’s room due to a disagreement they had, where she succumbed to her

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<sup>133</sup> *Beatrice Ngwasi Kyusya v Republic (2016)* eKLR.

<sup>134</sup> *Beatrice Ngwasi Kyusya v Republic (2016)* eKLR.

<sup>135</sup> *Beatrice Ngwasi Kyusya v Republic (2016)* eKLR.

<sup>136</sup> *Beatrice Ngwasi Kyusya v Republic (2016)* eKLR.

<sup>137</sup> *Beatrice Ngwasi Kyusya v Republic (2016)* eKLR.

<sup>138</sup> *Kiprop Kerich Ezra v Republic (2021)* eKLR.

injuries.<sup>139</sup> Additionally, he faced a second charge of attempted suicide under Section 226 of the Penal Code for attempting to take his own life by stabbing himself in the throat with a kitchen knife.<sup>140</sup>

The prosecution presented evidence through witnesses who gave their testimony in court. In his defence, the petitioner stated that on the day in question, he traveled from Bomet, where he worked as a security officer for Smart Guard Security, to Kericho at the insistence of the deceased who wanted to meet and talk.<sup>141</sup> He claimed that upon meeting the Deceased, her brother, a friend, and her cousin were present. She later escorted them and returned with him to her brother's house, where she locked the door and confronted him about not answering her calls.<sup>142</sup> She accused him of being with another woman and, in a fit of anger, stabbed him in the throat with a kitchen knife. He lost consciousness and later regained it at the hospital.<sup>143</sup> He further mentioned that he had been in custody for nine years, during which he obtained a certificate in theology and underwent reform and rehabilitation.<sup>144</sup>

He was found guilty of murder, and even after appealing, the court upheld the conviction, concluding that he had committed the act in cold blood following the disagreement. The court ruled that he must serve the sentence imposed by the trial magistrate.<sup>145</sup>

#### ***4.2.3 Republic v Paul Otongo Onderi (2018)***

The accused pleaded guilty to the charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code following a plea bargain.<sup>146</sup> The case involved the accused assaulting and strangling the deceased, Gladys Kemunto, on May 16, 2018. Investigations indicated that the incident stemmed from allegations of infidelity by the deceased.<sup>147</sup>

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<sup>139</sup> *Kiprop Kerich Ezra v Republic* (2021) eKLR.

<sup>140</sup> *Kiprop Kerich Ezra v Republic* (2021) eKLR.

<sup>141</sup> *Kiprop Kerich Ezra v Republic* (2021) eKLR.

<sup>142</sup> *Kiprop Kerich Ezra v Republic* (2021) eKLR.

<sup>143</sup> *Kiprop Kerich Ezra v Republic* (2021) eKLR.

<sup>144</sup> *Kiprop Kerich Ezra v Republic* (2021) eKLR.

<sup>145</sup> *Kiprop Kerich Ezra v Republic* (2021) eKLR.

<sup>146</sup> *Republic v Paul Otongo Onderi* (2018) eKLR.

<sup>147</sup> *Republic v Paul Otongo Onderi* (2018) eKLR.

In determining the appropriate sentence, the court noted that the accused was a first-time offender, young, and remorseful and that the incident occurred during a fight that escalated tragically.<sup>148</sup> The court also acknowledged that the accused had attempted suicide but was rescued by his relatives. However, the court dwelled on the gravity of the offense, noting that the deliberate act of strangulation resulted in the loss of an intimate partner's life.<sup>149</sup>

To express disapproval of such actions, the court deemed a custodial sentence necessary. The accused was therefore sentenced to seven years' imprisonment for the unlawful killing of the deceased.<sup>150</sup>

#### ***4.2.4 Analysis of the cases***

Through Durkheim's theory of suicide, it could be argued that Beatrice's violent conflict with her husband and subsequent suicide attempt suggest a breakdown in her social and familial structures, leaving her without clear guidance or support. Her unstable circumstances, including raising seven children as a single parent, likely compounded her feelings of despair which are elements of anomic suicide.<sup>151</sup> Ezra's attempt to end his own life after killing his girlfriend indicates a profound breakdown in his ability to cope with the conflict and its emotional consequences. This aligns with Durkheim's assertion that social instability, here represented by the intense relationship, can catalyse extreme actions.<sup>152</sup>

Similarly, Paul's attempt to take his own life after the incident can be understood through the lens of anomic suicide, which arises during periods of social or relational instability.<sup>153</sup> The allegations of infidelity, the subsequent fight, and the tragic death of the deceased signify a breakdown in his personal and relational stability. This disruption likely contributed to feelings of despair and purposelessness, which Durkheim identifies as precursors to suicidal behavior. His actions reflect

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<sup>148</sup> *Republic v Paul Otongo Onderi* (2018) eKLR.

<sup>149</sup> *Republic v Paul Otongo Onderi* (2018) eKLR.

<sup>150</sup> *Republic v Paul Otongo Onderi* (2018) eKLR.

<sup>151</sup> Mueller A, Abrutyn S, Pescosolido B and Diefendorf S, 'The social roots of suicide: Theorising how the external social world matters to suicide and suicide prevention,' 2.

<sup>152</sup> Mueller A, Abrutyn S, Pescosolido B and Diefendorf S, 'The social roots of suicide: Theorising how the external social world matters to suicide and suicide prevention,' 2.

<sup>153</sup> Travis R, 'Halbwachs and Durkheim: A test of two theories of suicide,' 2.

the emotional turmoil brought about by the conflict, escalating to violence and an eventual attempt at self-harm.

However, Adinkrah's perspective emphasises the importance of criminalising suicide attempts to maintain public safety and deter similar behaviour in society.<sup>154</sup> He argues that the state has a responsibility to safeguard public welfare and safety through law enforcement, where criminalising suicide attempts enables the police to intervene in situations where individuals pose a danger to themselves or others.<sup>155</sup> In the cases above, their actions extended beyond self-harm to inflicting serious injuries on their significant others, acts that escalated the situation from personal distress to a broader public safety concern.

The attempted murder and murder charges reflect the need to protect others from harm and maintain societal order. By criminalising suicide attempt, the law provides a mechanism for law enforcement to apprehend and manage individuals in distress, preventing potential threats to others and maintaining public safety.<sup>156</sup> According to Adinkrah's, their actions warranted legal intervention to address both potential danger to society and their own vulnerability.<sup>157</sup>

The custodial sentence for attempted suicide could be seen as an opportunity to provide structured care and rehabilitation in a controlled environment, ensuring the individual's safety while they receive support. By removing them from a potentially dangerous environment, the state could ensure that they were no longer a risk to themselves or others, while facilitating rehabilitation where Beatrice was able to acquire creative skills and Ezra was able to acquire a certificate in Theology.

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<sup>154</sup> Adinkrah M, 'Anti-suicide laws in nine African countries: Criminalization, prosecution and penalization,' 279-292.

<sup>155</sup> Adinkrah M, 'Anti-suicide laws in nine African countries: Criminalization, prosecution and penalization,' 279-292.

<sup>156</sup> Adinkrah M, 'Anti-suicide laws in nine African countries: Criminalization, prosecution and penalization,' 279-292.

<sup>157</sup> Adinkrah M, 'Anti-suicide laws in nine African countries: Criminalization, prosecution and penalization,' 279-292.

### 4.3 The Magistrate court cases

There are other instances where cases of suicide and attempted suicide under the Magistrate court have gone unreported on law report websites due to the nature of the court proceedings. However, these cases have been covered as issues in the national newspapers.

In 2011, John Wachira Gichuki had an argument with his brothers at their home and later on tried to commit suicide by hanging himself with a rope in his house.<sup>158</sup> He was arrested and taken to Nyeri law courts where he was sentenced to 3 years imprisonment for attempting to commit suicide contrary to Section 226 of the penal code.<sup>159</sup>

Similarly in 2013, Kelvin Wanjala attempted to throw himself down a building. He was subsequently taken to the Nakuru law courts, where he explained that his actions were driven by his neighbours labelling him a robber.<sup>160</sup> His neighbours shunned him, which led him to feel as if life was no longer worth living. The case was scheduled for determination on November 25th of the same year.<sup>161</sup>

### 4.4 Conclusion

The jurisprudence analysed shows the different approaches taken by the courts between punitive and rehabilitative ways of addressing suicide and attempted suicide. The case of Frankline Munene, Elijah Mithamo and Felix Hamisi underscore the importance of considering the psychological, social, and familial factors underlying suicidal behaviour. The court's decision to replace imprisonment with probation demonstrates a compassionate approach towards attempted suicide. By focusing on counselling and family reconciliation, the courts acknowledge the appellant's mental health challenges and dysfunctional family dynamics.<sup>162</sup>

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<sup>158</sup> Nasibo K, 'Suicide: Is the law doing more harm than good?' Daily Nation, 9 November 2011, <https://nation.africa/kenya/healthy-nation/suicide-is-the-law-doing-more-harm-than-good--3438046> on 15 June 2021.

<sup>159</sup> Nasibo K, 'Suicide: Is the law doing more harm than good?' Daily Nation, 9 November 2011, <https://nation.africa/kenya/healthy-nation/suicide-is-the-law-doing-more-harm-than-good--3438046> on 15 June 2021.

<sup>160</sup> Nation reporter, 'They called me a robber, claims suicide bid man' Daily Nation, 8 October 2013 <https://nation.africa/kenya/news/they-called-me-robber-claims-suicide-bid-man-902182> on 2 July 2020.

<sup>161</sup> Nation reporter, 'They called me a robber, claims suicide bid man' Daily Nation, 8 October 2013 <https://nation.africa/kenya/news/they-called-me-robber-claims-suicide-bid-man-902182> on 2 July 2020.

<sup>162</sup> *Franklin Munene Mbae v Republic* (2013) eKLR.

On the other hand, the cases of Beatrice Kyusya, Ezra Kiprop and Paul Onderi show the deterrent and protective role of criminalisation where they do not often prioritise addressing the root causes of distress but promoting public order. They illustrate a scenario where punitive measures were deemed necessary due to the harm caused to others.<sup>163</sup> In conclusion, courts tend to follow the trend of implementing Section 226 as a means of promoting public order where the individuals are taken away from society to protect the general welfare of the community. However, depending on the circumstances as shown they may choose not to implement the law and acquit the accused based on discretion.



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<sup>163</sup> *Beatrice Ngwasi Kyusya v Republic* (2016) eKLR.

## CHAPTER FIVE: FINDINGS, CONCLUSION AND RECOMMENDATIONS

### 5.1 Brief discussion of findings

Kenya's continued criminalisation of attempted suicide under Section 226 of the Penal Code indicates a contrast between the current legal framework and the WHO policy on suicide and attempted suicide. The policy advocates for the decriminalisation of attempted suicide arguing that it deters individuals from seeking support. The organisation urges governments and policy makers to develop comprehensive suicide prevention strategies with decriminalisation being one of them. The legal framework on the other hand continues to provide for sentences of up to two years' imprisonment, and in some cases often ordered by courts to run concurrently with sentences for other charges.

The divergent judicial approach in Kenya features the complexity of addressing suicide within the current legal framework. Cases like *Frankline Munene Mbae v Republic*, *Elijah Murimi Mithamo v Republic* and *Felix Hamisi David v Republic/Odpp* demonstrate the potential for courts to adopt rehabilitative measures, focusing on mental health support and family reconciliation to address the root causes of suicidal behaviour. In contrast, *Beatrice Mwasi Kyusya v Republic*, *Kiprop Kerich Ezra v Republic* and *Republic v Paul Otongo Onderi* reflect the protective and deterrent aspects of criminalisation, prioritising public order but often not focusing on the underlying psychological and social distress.

Kenya continues to persist in criminalising suicide and attempted suicide in a bid to promote public safety. However, in recent years, a move towards reform has been indicated where in June 2019 former President Uhuru Kenyatta acknowledged depression as a widespread condition affecting people of all kinds. He mandated the formation of a task force on mental health whose function was to declare mental illness a national emergency of pandemic proportions.<sup>164</sup> It led to the creation of the Suicide Prevention Strategy for the years 2021 to 2026 to address the situation. The policy framework focuses on prevention and intervention strategies which are in line with the WHO policy brief and action plans. It shows a commitment to a pro-active, comprehensive approach to

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<sup>164</sup> Kimathi V, 'Mental health for police officers needs proper legislation and collaboration to combat, International Commission of Jurists,' 30 August 2021  
<https://icj-kenya.org/news/mental-health-for-police-officers-needs-proper-legislation-and-collaboration-to-combat> on 30 August 2021.

mental health which is an international appeal for help to those who have attempted suicide or are about to attempt suicide.<sup>165</sup>

Furthermore, the recently proposed Penal Code (Amendment) Bill in 2021 is a significant step toward updating the legal framework to handle mental health concerns.<sup>166</sup> The initiative is to amend the Code to eliminate Section 226 spearheaded by Chief Justice Martha Koome.<sup>167</sup> As recently as August 2024, a petition was submitted to the national assembly seeking for the decriminalisation of attempted suicide. The argument being that the law fails to address the underlying mental health issues instead it hinders effective suicide prevention efforts.<sup>168</sup>

## 5.2 Conclusion

With the existence of these laws and the interpretation by the courts, this study concludes that relating the current laws with international standards, particularly the WHO Global Health Action Plan, is essential for reducing global suicide mortality rates and achieving the Sustainable Development Goals by 2030.

In states where this has been done such as Sri Lanka and Singapore, the rates of suicide decreased after attempted suicide laws were repealed. It was decriminalised by the Criminal Law Reform Act in 2019, with the amendments officially taking effect at the beginning of 2020 in Singapore.<sup>169</sup> As a result, the number of suicide and attempted suicide rates decreased with more people coming out to seek support from the law enforcement as well.<sup>170</sup> In Ghana before repealing the law, criminal prosecution of suicide attempt survivors had been found to increase their risk of

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<sup>165</sup> Ministry of Health, Suicide Prevention Strategy, 18 February 2022, 13.

<sup>166</sup> Section 3, *Penal Code (Amendment Bill)* 2021.

<sup>167</sup> Sang M. 'The case for decriminalisation of attempted suicide in Kenya: Lessons from comparative experience' 198.

<sup>168</sup> Njaagi D, Petition calls for decriminalising suicide attempts, *The Standard*, 5 August 2024.

<https://www.standardmedia.co.ke/sports/health-science/article/2001500851/petition-calls-for-decriminalising-suicide-attempts> on 13 August 2024.

<sup>169</sup> Goh T, Parliament: Number of suicide deaths down this year after its decriminalisation, *The Strait times*, 4 November 2020

<https://www.straitstimes.com/singapore/politics/parliament-number-of-deaths-from-suicide-decreased-this-year-following-its> on 4 November 2020.

<sup>170</sup> Goh T, Parliament: Number of suicide deaths down this year after its decriminalisation, *The Strait times*, 4 November 2020

<https://www.straitstimes.com/singapore/politics/parliament-number-of-deaths-from-suicide-decreased-this-year-following-its> on 4 November 2020.

depression and anxiety further elevating their likelihood of death.<sup>171</sup> However, as time passed repealing such laws had been anticipated to yield positive outcomes. This is through reducing the stigmatising label associated with suicide, encouraging individuals to seek professional help, and alleviating the stress of potential criminal charges for those who attempt suicide.<sup>172</sup>

This shows that while legal reform is a critical first step, its effectiveness depends on broader systemic changes. Decriminalising attempted suicide and suicide represents a critical step in this process. With the courts analysing the issues behind attempts to suicide in Kenya, a step towards a more compassionate approach can be seen. Such reform has the potential to enhance public health outcomes ultimately fostering a significant step towards suicide prevention.

### 5.3 Recommendations

Some of the recommendations that should be taken into consideration include the following;

- (i) *Amendment of Section 226 of the Penal Code:* The provision should be amended to decriminalise suicide and attempted suicide. It will encourage the awareness about mental health and societal influences where individuals feel protected by the law. The threat of punishment for a failed suicide attempt may drive an already distressed individual to choose methods that are more certain to result in death. Ironically, while the intended purpose of criminalisation is to preserve life, it may instead reduce the likelihood of survival. The individual may also resort to using multiple methods in a single attempt to ensure the act's success, thereby avoiding both survival and the associated punishment.
- (ii) *Amendment of Section 31(f)(i) of the Succession Act:* The invalidation of a gift made in contemplation of death by suicide leaves a significant gap in the law, as it offers no clear guidance on how the affected property should be redistributed. This ambiguity creates uncertainty for dependents or other beneficiaries who may have legitimate claims to the property. Although the provision underscores a strong commitment to public policy, it conflicts with views on mental health and the decriminalisation of suicide as advocated for

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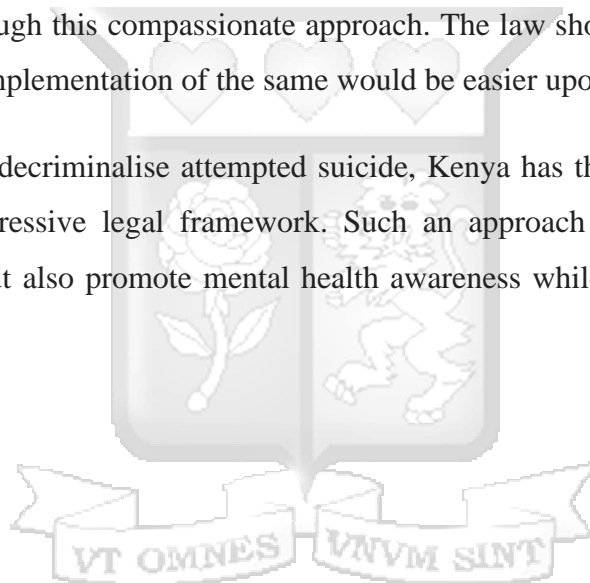
<sup>171</sup> Adinkrah M, 'Anti-suicide laws in nine African countries: Criminalization, prosecution and penalization,' 279-292.

<sup>172</sup> Adinkrah M, 'Anti-suicide laws in nine African countries: Criminalization, prosecution and penalization,' 279-292.

by the WHO. A more balanced approach, combining deterrence with compassion for individuals in extreme circumstances, would offer a more equitable and contemporary solution.

- (iii) *Maintaining a balance between mental health and public safety:* In the interpretation of the law, there is a need for balance as to when certain conditions of public safety should be held where individuals have committed crimes that harm others. Their imprisonment would be beneficial to protect other members of the society and not to evade other laws for crimes committed. On the other hand, the court should be able to also intervene where an individual is going through issues such as conflicts within the family or within the society to help them through this compassionate approach. The law should retain this balance as well so that the implementation of the same would be easier upon the courts.

By adopting measure to decriminalise attempted suicide, Kenya has the opportunity to create a compassionate and progressive legal framework. Such an approach would not only support individuals in distress but also promote mental health awareness while also maintaining public order.



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