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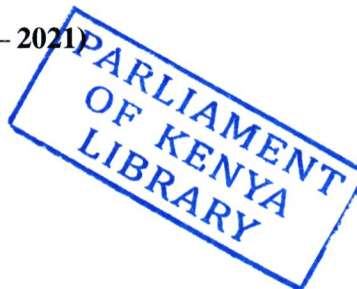
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REPUBLIC OF KENYA



TWELFTH PARLIAMENT (FIFTH SESSION – 2021)

THE NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

**REPORT ON THE CONSIDERATION OF THE
COMMUNITY GROUPS REGISTRATION BILL, 2021**

(National Assembly Bill No. 20 of 2021)

OCTOBER, 2021

Directorate of Departmental Committee Services,
National Assembly,
Parliament Buildings,
NAIROBI.


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|  THE NATIONAL ASSEMBLY PARLIAMENT BUILDINGS | |
| DATE: 14 OCT 2021 | DAY: Thursday |
| TABLED BY: | Hon Kabonga Wachira Chairperson Committee |
| CLERK-AT THE-TABLE: | Christine Nderitu |

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LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|-------|-----------------------------------|
| CS | Cabinet Secretary |
| CoG | Council of Governors |
| CT-OP | Cash Transfer for the Elderly |
| CBO | Community Based Organisations |
| CECM | County Executive Committee member |
| MTEF | Medium Term Expenditure Framework |
| MP | Member of Parliament |
| NA | National Assembly |
| NGO | Non-Governmental Organization |
| PBO | Public Benefits Organization |
| SO | Standing Orders |

LIST OF ANNEXURES

- Annexure 1:** Adoption Schedule
- Annexure 2** The Community Groups Bill Registration Bill, 2021
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CHAIRPERSON'S FOREWORD

The Community Groups Registration Bill, 2021 (*National Assembly Bill No. 20 of 2021*) underwent First Reading on 8th June, 2021 and consequently committed to the Departmental Committee on Labour and Social Welfare for review and report to the House pursuant to the provisions of Standing Order 127(1).

In summary, the Bill seeks to provide a regulatory framework for the registration and regulation of community groups, i.e., a voluntary association of individuals from the same community which is self-organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit and includes a special interest group, community project and community-based organisation.

The Committee, pursuant to the provisions of Article 118 of the Constitution and Standing Order 127 (3) invited submissions from the public on the Bill via advertisements in the daily newspapers of 11th June, 2021. During its Sittings held on 30th and 31st August, 2021, the Committee received submissions from stakeholders, including the Ministry of Labour and Social Protection, the Ministry of Interior and Coordination of National Government, State Law Office, the Council of Governors and Non-Governmental Organisation Coordination Board. Thereafter, the Committee retreated to consider the submissions and deliberated on the Bill. Accordingly, the Committee recommends that the Bill be **agreed to, subject to the proposed amendments** contained in the Schedule to this Report.

The Committee is grateful to the offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all stakeholders who submitted their comments on this Bill. Finally, I want to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat for their immense contribution towards the preparation and production of this Report.

On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House the report of the Committee on the Community Groups Registration Bill, 2021, National Assembly Bills No. 20 of 2021

HON. JOSPHAT KABINGA WACHIRA, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

CHAPTER ONE

1.0 PRELIMINARIES

1.1. Committee Mandate

The Departmental Committee on Labour and Social Welfare is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in S.O. 216(5) is to *inter-alia*:-

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.*
- iii. ***To study and review all legislation referred to it;***
- iv. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- v. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;*
- vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and*
- vii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

The Committee is mandated to consider the following subjects: -

- i. Labour;
- ii. Labour relations;
- iii. Manpower or Human Resource Planning;
- iv. Gender;
- v. Youth;
- vi. Social Welfare and Security;
- vii. Children`s Welfare; and
- viii. Persons Living with Disabilities.

In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:

- i. The State Department for Labour;
- ii. The State Department for Social Protection;
- iii. The State Department for Gender;
- iv. The State Department for Youth;
- v. The State Department for Arid and Semi-Arid Lands;
- vi. National Gender and Equality Commission.

1.2. Committee Membership

The Committee comprises of the following members -

The Hon. Kabinga Wachira, M.P. (**Chairperson**)

Mwea Constituency

Jubilee Party

The Hon. Gideon Koske Kimutai, M.P. (**Vice-Chairperson**)

Chepalungu Constituency

Chama Cha Mashinani (CCM)

The Hon. James Onyango K'Oyoo, M.P.
Muhoroni Constituency
Orange Democratic Movement (ODM)

The Hon. Janet Marania Teyiaa, M.P.
Kajiado County
Jubilee Party

The Hon. Gideon Keter, M.P.
Nominated M.P.
Jubilee Party

The Hon. Ronald Kiprotich Tonui, M.P.
Bomet Central
Jubilee Party

The Hon. Moses Malulu Injendi, M.P.
Malava Constituency
Jubilee Party

The Hon. Tom Odege, M.P.
Nyatike Constituency
Orange Democratic Movement (ODM)

The Hon. Rose Museo, M.P.
Makueni County
Wiper Democratic Movement (WDM)

The Hon. Caleb Amisi, M.P.
Saboti Constituency
Orange Democratic Movement (ODM)

The Hon. Omboko Milemba, M.P.
Emuhaya Constituency
Amani National Congress Party (ANC)

The Hon. Charles Kanyi Njagua, M.P.
Starehe Constituency
Jubilee Party

The Hon. Fabian Kyule Muli, M.P.
Kangundo Constituency
Muungano Party

The Hon. Abdi Mude Ibrahim, M.P.
Lafey Constituency
Economic Freedom Party (EFP)

The Hon. Titus Mukhwana Khamala, M.P.
Lurambi Constituency
Amani National Congress Party (ANC)

The Hon. Safia Sheikh Adan, M.P.
Marsabit County
Jubilee Party

The Hon. Ole Sankok David, M.P.
Nominated M.P.
Jubilee Party

The Hon. Wilson Sossion, M.P.
Nominated M.P.
Orange Democratic Movement (ODM)

1.3 Committee Secretariat

The secretariat comprises the following officers –

1. Ms. Cherotich Maritim, **Senior Clerk Assistant/ Head of Secretariat**
2. Mr. John Mugoma, Clerk Assistant II
3. Ms. Doreen Karani, Legal Counsel
4. Mr. James Muguna, Research Officer
5. Ms. Winnie Kiziah, Media Relations Officer
6. Ms. Sheila Jebotibin, Sergeant-at-Arms

CHAPTER TWO

2.0 CONSIDERATION OF THE COMMUNITY GROUPS REGISTRATION BILL, 2021

2.1 Overview of the Bill

1. The Bill seeks to provide a regulatory framework for the registration and regulation of community groups, that is, a voluntary association of individuals from the same community which is self-organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit and includes a special interest group, community project and community-based organisation.
2. Part I of the Bill (clauses 1 and 2) provides for preliminary matters, including the short title of the Bill and the definitions of key terms used in the Bill.
3. Part II of the Bill (clauses 3 to 8) provides for the Office of the Director of Social Development, which is intended to be an office in the public service. The clause provides for the appointment and functions of the Director. It also provides for social development committees, their appointment, membership, functions and powers, the conduct of business, and the remuneration of their members.
4. Part III of the Bill (clauses 9 to 20) provides for the registration of community groups, including the registration of special community groups and the amalgamation and merger of community groups. In addition, it provides for the requirements for registration and the circumstances under which a community group may be dissolved or have its certificate of registration suspended or cancelled.
5. Part IV of the Bill (clauses 21 to 30) provides for the regulation of community groups, including the general objects of community groups; the appointment and role of office bearers; dispute resolution; registers of members of community groups; and obligation to maintain the confidentiality of members' details.
6. Part V of the Bill (clauses 31 to 37) provides for financial matters relating to community groups, including the maintenance of financial records; the responsibilities of treasurers' over community groups' accounts; the power of the Director to request information and documents from community groups; the audit of community groups' financial records; and resource-mobilisation activities by community groups.
7. Part VI of the Bill (clauses 38 to 41) provides for general matters. Clause 38 makes it an offence to obstruct the Director in the course of performing his duties, while clause 39 provides for a general penalty. Clause 40 provides for the making of regulations, and clause 41 provides for transitional matters relating to community groups that had been registered by the National Government on the coming into force of the Bill.
8. The First Schedule provides for the conduct of business and affairs of county and sub-county community development committees.
9. Second Schedule provides for matters to be provided for in the Constitution of a community group.
10. The Bill affects the functions of County Governments as set out in the Fourth Schedule to the Constitution and is therefore a Bill concerning counties.

2.2 Public Participation

11. The Community Groups Registration Bill, 2021 (*National Assembly Bill No. 20 of 2021*) underwent First Reading on 8th June, 2021 and was subsequently committed to the Departmental Committee on Labour and Social Welfare for review and report to the House pursuant to the provisions of Standing Order 127(1).
12. Pursuant to Article 118 of the Constitution and Standing Order 127(3) of the National Assembly, the Committee vide an advertisement in the daily newspapers of 11th June, 2021 (*Annexure 4*) invited the public to make representations on Bill. The Committee also identified and invited key stakeholders who appeared before it at a public hearing on 30th and 31st August, 2021.
13. The Committee received submissions from numerous stakeholders, including the Ministry of Labour and Social Welfare, the Ministry of Interior and Coordination of National Government, the Council of Governors and the Non-Governmental Organisation Coordination Board.
14. The detailed submissions are contained in this Chapter and actual submissions are annexed to this Report as *Annexure 5*.
15. The Committee extensively considered the contents of both the oral and written submissions from which it drew its recommendations

2.2.1 Submissions by the Ministry of Labour and Social Protection

16. The Ministry of Labour and Social Protection and the Ministry of Interior & Coordination of National Government through Mr. Simon Chelugui, the Cabinet Secretary for Labour and Social Protection and Amb. Hussein Dhadho, Chief Administrative Secretary, Ministry of Interior and Coordination of National Government made a consolidated submission to the Committee regarding the Bill on 30th August, 2021. They submitted as follows-
 - (i) The registration of self-help groups is among the mandates of the Ministry of Labour and Social Protection as outlined in the Executive Order No. 1 of 2018. The mandate is executed by the State Department for Social Protection through the Directorate of Social Development under its core function of community development which includes group promotion through mobilisation, registration, participation and capacity building of individuals and communities.
 - (ii) The community groups include; self-help groups, older-persons group, youth groups, women groups, men groups, mixed groups, community-based organisations, refugee groups, Persons with Disabilities groups and other special interest groups.
 - (iii) The Bill is important as it helps boost security measures in the country through vetting and screening of community groups seeking registration whereas, National government administrative Officers will provide the support necessary for screening membership and objects of groups and the county government will retain the mandate of mobilisation of communities for sustainable development.
 - (iv) The Bill was sanctioned from the Cabinet level and does provide the framework for community groups registration at the local level.

- (v) The registration of community groups is undertaken by the sub-county social development office and upon registration the groups are issued with a Certificate which guarantees them the right of recognition and assembly. To afford community members speedy registration the Ministry has in effect utilised the Huduma Centres across the country.
- (vi) Majority of the registered groups engage in socio-economic activities geared towards improvement of their livelihoods and self-reliance.
- (vii) The process of mobilisation and registration of community groups has been going on in Kenya since independence. In the past first five years, The State Department for Social Protection has cumulatively registered 271,400 community groups with an average annual registration of fifty-four thousand (54,000) groups and an estimate Appropriation in Aid (AIA) of Kenya shillings seventy-one million (KES. 71,000,000) annually.
- (viii) Registration of community self-help groups has contributed significantly to the growth of community members and individuals by continuously enabling them to benefit from shared opportunities and enhancing their social capital and self-reliance eventually leading to home grown sustainable development.
- (ix) The Executive Order No. 1 of 2018 provide for the mandate of the State Department of Social Protection to include registration of self-help groups and therefore, this remains the only legal support for operation. The development of the Bill will offer sufficient legal framework that will enhance growth and development of community groups.
- (x) The mobilisation and management of the groups has relied heavily on various guidelines and procedures developed by the Ministry responsible for Social Development. He further, reiterated the need for establishment of the office of Director social development and cascaded down to the county level for the implementation of the registration function supported by the county social development technical committee.
- (xi) The Ministry has experienced numerous challenges while trying to effectively respond to the needs of these groups, and more so where conflict, leadership wrangles, misappropriation of group resources and assets have occurred. Unregulated registration and management of community groups has led to weak complaints and grievance redress mechanisms. This has also in some instances led to exclusion, marginalisation and exploitation of the vulnerable members in the society.
- (xii) The development of the CGR Bill, 2021 is anticipated to provide a framework for streamlined registration and management of community groups. Further, create an enabling environment for recognition of community groups as legal entities, hence fostering socio-economic development.
- (xiii) The Bill was a product of a successful public participation and stakeholder engagement. The consultation process was with various stakeholders and government MDAs including KLRC, state law office, CoG, Academic Institutions, Civil Society Organizations, FBOs, and community members among others.
- (xiv) The Bill if enacted will be beneficial to the public and government in various fronts including but not limited to the following –

- a) Provides a regulatory framework for registration, management and regulation of community groups in the country;
 - b) Creates an enabling operational environment that promotes community empowerment, self-reliance and sustainable development of community groups and projects;
 - c) Provide for protection of the rights of community groups;
 - d) Enhance governance within groups by providing for accountability mechanisms (group leadership, Constitution, reporting mechanism among others);
 - e) Facilitate collaborations and linkages between community groups, National and County governments, financial institutions and other stakeholders;
 - f) Enhance social cohesion and tolerance within community group members;
 - g) Support resource mobilisation for groups through acquisition of group certificate;
 - h) Allow for group savings and loans uptake from financial institutions;
 - i) Provides group members with a sense of Identity, belonging, ownership and freedom of association;
 - j) Provides for a platform for grievance redress and conflict resolution;
 - k) Provides for establishment of a Database for all registered community groups in the country; and
 - l) Provide for part of the resources raised through group registration to be ploughed back to the Counties for group development.
- (xv) Implementation of the Community Group Registration Bill, 2021 if passed and Assented by the president will require resources from both Government and Development Partners. The Implementation of the Bill by the State Department for Social Protection will be through the Medium-Term Expenditure Framework (MTEF) budgeting process.

2.2.2 Submissions by the NGO Co-ordination Board

17. The Committee held a meeting with the NGO Co-Ordination Board on 30th August, 2021. The Board, which was represented by Mr. Mutuma Nkanata, the Board's Chief Executive Officer, submitted as follows—
- i) The Bill provides a framework for the mobilisation, registration, coordination and regulation of community groups in a bid to make them viable.
 - ii) The definition of the Community Groups should be clear to reduce ambiguities during implementation. The definition should cover the purpose, common goal and the local dimension as envisaged in the registration requirements and should not overlap the provisions of the NGO Act, 1990 and the PBO Act, 2012.

- iii) The Bill defines a community as persons who reside in the same geographic locality or who are considered as a unit because of their shared common interests. It further defines a community group as a voluntary association of individuals from the same community which is self-organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit.
- iv) From the definition, it is clear that community groups are not limited to charitable or public benefit objectives as may be with the NGOs Act or PBOs Act. Some of the community groups that may qualify for registration under this law include social groups such as resident associations, book clubs and other shared interest groups. Previously, for such groups to be registered, they would either be societies or public benefit organisations.
- v) A standard name search mechanism should be established to avoid double registration of organisations under more than one legal regime and duplicity of registration. A standard name search database which will be used to reserve names for NGOs or PBOs, CBOs, Community Groups, Societies and other charitable organisations.
- vi) The Bill creates an office of the Director of Social Development, an office in the public service that shall be in charge of mobilising communities to form groups to undertake community projects, registration of community groups and supervision, monitoring and evaluation of community projects by community groups among others. The Bill is however silent on the qualifications that one is required to have to be appointed as a director.
- vii) Section 16(6) refers to the distribution of assets upon voluntary dissolution. Community Groups are registered as self-help groups strictly for the benefit of the membership as opposed to NGOs which are registered as charitable organisations and whose assets are of a public nature and therefore the same is redistributed to other organisations of similar objectives. The distribution of assets in this case therefore is not clear as to whom the assets shall be distributed to.
- viii) The Bill provides that the community groups are required to maintain financial records. This is good for accountability and transparency. The NGOs Act and PBO Act encourages PBOs to form umbrella associations which can develop and publish codes of conduct applicable to members, governing body officials, staff and volunteers of PBOs. This form of self-regulation can be used by community groups to promote accountability and transparency amongst themselves.

2.2.3 Submissions by the Council of Governors

18. The Committee also received submissions from the Council of Governors on 30th August, 2021, through its representative, Ms. Irine M. Ogamba who is the Director of Legal Services in the Council. She submitted as follows–

- i) The Council rejects the Bill as it contravenes the provisions of the Fourth Schedule (Part 2) on Functions of County Governments and seeks to have the Bill reviewed and submitted to County Assemblies for consideration and enactment.
- ii) The Council reiterates that the function of mobilisation of communities to participate in economic development is a function of county governments and will

have to be protected. The council further notes that, the Transition Authority while unbundling county functions provided for the function of social and community mobilisation as a preserve of counties.

- iii) On the bundling of the Fourth Schedule, Part 2 (14), the Transition Authority provided that the County Governments shall “ensure and coordinate the participation of communities and locations in governance at the local level and assist communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.”
- iv) The unbundling and transfer of functions is a constitutional interpretation and application exercise that ought to be objectively undertaken based on the constitutional provisions and informed by key fundamental objects and principles.
- v) The assignment of functions and powers under Article 186(2) of the Constitution recognises that while some functions are assigned as exclusive functions of each level of government, others are concurrent functions of both levels of government. Implementation of the concurrent functions requires cooperation between the national and county governments.
- vi) The Transition Authority unbundled the 14th County function as follows:
 - a) Developing systems, standards and operational procedures for community participation;
 - b) Facilitating formation/ restructuring of community level structures for community engagement and participation in development Initiatives;
 - c) Facilitating formation, registration and certification of community groups;
 - d) Undertake community groups capacity building and sensitisation;
 - e) Providing grant support to community groups to support up-scaling/ replication of best practices; and
 - f) Facilitation to community capacity support centres.
- vii) The Bill is amended in the relevant sections as submitted on the basis of the unbundled function (14) of the County Governments pursuant to the Fourth Schedule, Objects and Principles of Devolution in Chapter 11 of the Constitution of Kenya.
- viii) With the foregoing, the **County Governments represented by the Council of Governors oppose the enactment of the Bill in its entirety** on the grounds submitted below and a critical comparison of the Community Groups Registration Bill, 2021 and unbundled function (14) of County Governments-
 - a) That the Bill contravenes the Constitution of Kenya and is a flagrant claw back on devolution.

- b) A Bill cannot legislate on county functions and assign national structures to implement the law.
- c) The Bill contravenes the provisions of the Fourth Schedule part 2 on functions of county governments and seeks to have the Bill reviewed and submitted to county Assemblies for consideration and enactment.
- d) The function of mobilisation of communities to participate in economic development is a function of county governments and will have to be protected.
- e) The Transition Authority while unbundling county functions provided for the function of social and community mobilisation as a preserve of counties.

2.2.4 Submissions by the Office of the Attorney General

19. Mr. Samson Maundu representing the Office of the Attorney General, appeared before the Committee on 30th August, 2021 and submitted as follows in relation to the issues raised by the NGO Co-ordination Board and the Council of Governors –

- i) The proposed Bill intends to address the gap in the legislative framework. It also complements the NGO Coordination Act, the PBO Act and the Societies Act.
- ii) That the Policy falls within the jurisdiction of the Ministry of Labour and Social protection which has registered social development groups through its social development officers. The current registration of such groups is done administratively owing to lack of a legislative framework for the same.
- iii) That policy has not changed, and there isn't any significant constitutional issues on the Bill. The Office of the Attorney General supports the Bill and is committed to provide guidance to the State Department of Social development in the processing of the Bill as well as the Committee in consideration of the amendments thereof.
- iv) Article 191 of the Constitution allows, in certain circumstances, national legislation to supersede county legislation, if certain conditions are satisfied. These conditions include that the national legislation shall apply uniformly throughout Kenya [Art. 191(2)(a)] and the national legislation is necessary for the maintenance of national security [Art. 191(3)(c)]. The Ministry prepared and submitted a Cabinet Memorandum on the Bill to the Cabinet for approval, which approval was granted, hence the Bill was transmitted to Parliament procedurally.

CHAPTER FOUR

3.0 COMMITTEE SPECIFIC OBSERVATIONS AND RECOMMENDATIONS

20. In considering the Bill and while conducting public participation, the Committee observed that there was agreement generally among stakeholders on the need to provide a legislative framework on registration of community groups and address matters concerning the community groups. However, the Committee observed that the following specific clauses in the Bill elicited diverse views that called for in-depth scrutiny and accordingly considered the same and made the observations and recommendations on each clause as contained in this Chapter –

1) LONG TITLE

Committee Observations

The Committee observed that –

(i) The Council of Governors (CoG) proposes the provision be amended to read as follows

“AN ACT of Parliament to provide a regulatory framework for the registration and regulation of community groups and to give effect to the fourth schedule part ii (14) of the Constitution and for connected purposes”

(ii) The Committee observed that the long title as provided in the Bill was sufficient;

2) CLAUSE 2- INTERPRETATION

Committee Observations

The Committee observed that –

(i) the Non-Governmental Organisations Coordination Board proposes amendment of the definition of “community group” under Clause 2 as follows;

“community group” means a voluntary association of individuals from the same community which is self-organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit and includes a special interest group, community project and community-based organisation but shall not include a Public Benefit Organization, NGO or groups formed to champion a political cause or contrary to public policy.”

The reason for the proposed amendment was because from the definition as proposed in the Bill, it is clear that community groups are not limited to charitable or public benefit objectives as may be with the NGOs Act or PBOs Act. The definition of “community group” is different from the definition of a “Non-Governmental Organisation” as provided for under the NGOs Co-ordination Act of 1990 which states that an NGO is a private voluntary grouping of individuals not operated for profit or other commercial purposes but which have organised themselves Nationally or Internationally for the benefit of the public at large and for the promotion of social

welfare, development charity or research in the area inclusive of, but not restricted to health, relief, agriculture.

Some of the community groups that may qualify for registration under this proposed law include social groups such as resident associations, book clubs and other shared interest groups. Previously, for such groups to be registered, they would either be societies or public benefit organisations. Therefore, NGOs and PBOs may be excluded explicitly in the definition of community groups.

(ii) The CoG proposed new definitions-

- (a) of the term “County Executive Committee Member” to mean “the County Executive Committee Member responsible for social development in the county”,
- (b) “office of the Sub – county administrator” to mean “the office of the sub county administrator established under sec 50 of the county Governments Act”
- (c) “Office of the Ward administrator” means the office of the Ward administrator established under section 51 of the county Government Act
- (d) Amend the definition of social development officer to “social development officer” means an officer in an office established by the County Public Service Board as such.

COG submitted that Community management entails mobilisation, registration, supervision etc. which is a function of the county governments and should be undertaken by a county structure. The new definitions are introduced as the structures are key in implementation of the Act. These structures shall implement what is proposed in the Bill to be undertaken by the social development Committee.

- (iii) Regarding the concerns raised by the COG, the Policy on the subject matter falls within the jurisdiction of the Ministry of Labour and Social protection which, currently registers social development groups through its social development officers. The current registration of such groups is done administratively because there isn't a legislative framework for the same. The proposed Bill is intended to address this gap in the legislative framework. It also complements the NGO Coordination Act, the PBO Act and the Societies Act.
- (iv) Further, Article 191 of the Constitution allows, in certain circumstances, national legislation to supersede county legislation, if certain conditions are satisfied. These conditions include that the national legislation shall apply uniformly throughout Kenya [Article 191(2)(a)] and the national legislation is necessary for the maintenance of national security [Article 191(3)(c)].
- (v) There is no definition of the term “Civil Society Organisation” yet the terminology is often misunderstood and erroneously used.

Committee Recommendation

- (i) The Committee agreed to the proposed amendment to “community group” as proposed by the NGO Board in order to exclude NGOs and PBOs explicitly in the definition of community groups.
- (ii) The Committee rejected the proposed amendments by the COG as they would negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill. The current registration of such groups is done administratively by the Ministry of Labour and Social protection because there isn't a legislative framework for the same and the Bill seeks to address this.
- (iii) The Committee agreed to the proposed definition of the terms “Civil Society Organisation” and “Community Group Constitution” as proposed by the Ministry of Labour and Social protection in order to bring clarity to the meaning of these terms.

3) CLAUSE 3- DIRECTOR OF SOCIAL DEVELOPMENT.

Committee Observations

The Committee observed that –

- (i) the COG had proposed for a County Governor to designate a County Executive Committee Member (CECM) to be responsible for Social Development and for the Bill to be amended to the effect that the functions to be undertaken by the Director of Social Development shall be instead undertaken by the said CEC Member. In its view, the functions of the Director of Social Development are assigned to the county governments and should be undertaken by an officer at the county government. The CECM may perform these functions alongside any other functions assigned to the office by the Governor, the County Executive Committee, national legislation or county legislation;
- (ii) the Ministry proposed inclusion of a new paragraph after paragraph (g) as follows-

(ga) approving, monitoring and evaluating the budget proposal provided by the Social Development Committee”

Committee Recommendations

- i) The Committee rejected the proposed amendments by the COG as they would negate the purpose and object of the Bill by assigning functions to a different organ from the one intended in the Bill. The current registration of such groups is done administratively by the Ministry Labour and Social protection because there isn't a legislative framework for the same and the Bill seeks to address this. Accordingly, the Director of Social Development should continue carrying out the functions under clause 3.
- ii) The Committee agreed to the proposed amendment by the Ministry to assign the overall responsibility over budgeting matters concerning the social development committees to the Director of Social Development in order to enhance the Director’s oversight role.

4) CLAUSE 4 - COUNTY COORDINATOR OF SOCIAL DEVELOPMENT

Committee Observation

The Committee observed that the CoG proposed to replace the County Coordinator of Social Development with the County Directors responsible for social development.

Committee Recommendation

The Committee rejected the proposed amendment by the CoG as it would negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill. The current registration of such groups is done administratively by the Ministry Labour and Social protection because there isn't a legislative framework for the same and the Bill seeks to address this. Accordingly in order to decentralise the services, the Bill proposes that the functions that are assigned to the Director of Social Development may be performed by County Coordinators of Social Development.

5) CLAUSE 5- SOCIAL DEVELOPMENT COMMITTEES

Committee Observations

The Committee observed that –

- (i) the CoG proposed deletion of the entire clause because the administrative structures provided in the County Governments Act can undertake the function.
- (ii) the Ministry of Labour proposed to amend clause 5(1)(a), to insert the words “from the National government” after the words “sub-county social development officer” in order to specify/ clarify on the sub-county social development officers referred in the Bill.
- (iii) the Ministry of Labour proposed to amend clause 5(1)(b), to have two representatives from the county government in the Social Development Committee instead of one.
- (iv) the Ministry of Labour proposed to amend clause 5(1)(e), to have four representatives of registered community groups operating in the sub-county in the Social Development Committee instead of five.
- (v) the Ministry of Labour proposed to amend clause 5(2) to ensure that the appointing or nominating authority shall take into consideration gender equity and ethnicity in the composition of the Social Development Committee as required under the Constitution.

Committee Recommendation

The Committee agreed to the proposed amendments by the Ministry as they will enhance the Bill by ensuring fair representation in the Social Development Committee.

The Committee rejected the proposed amendments by the CoG as they would negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill. The current registration of such groups is done administratively by the Ministry Labour and Social protection because there isn't a legislative framework for the same and the Bill seeks to address this.

6) CLAUSE 6- FUNCTIONS OF THE SOCIAL DEVELOPMENT COMMITTEE

Committee Observations

The Committee observed that CoG proposed that the functions proposed to be carried out by the Social Development Committees be assigned to the office of the sub-County Administrator at the sub- county level and the office of the Ward Administrator at the Ward level because these are the administrative structures provided for in sections 50 and 51 of the County Governments Act.

Committee Recommendation

The Committee rejected the proposed amendments by the CoG as they would negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill. The current registration of such groups is done administratively by the Ministry Labour and Social protection because there isn't a legislative framework for the same and the Bill seeks to address this. Accordingly in order to decentralise the services assigned to the Director of Social Development and the County Coordinators of social development, the Social Development Committee can continue to perform the said functions at the sub county level.

7) CLAUSE 7 - BUSINESS AND AFFAIRS OF SOCIAL DEVELOPMENT COMMITTEES

Committee Observation

The Committee observed that CoG proposed a deletion of the entire clause because it proposes that these duties be undertaken by the sub office of the sub-County Administrator and ward administrator whose business and affairs of are as set out in County Government Act. Further, regulations may be developed to guide the matter.

Committee Recommendation

The Committee rejected the proposed amendments by the CoG for the reasons provided earlier as they would negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill.

8) CLAUSE 8 - REMUNERATION OF MEMBERS OF SOCIAL DEVELOPMENT COMMITTEES

Committee Observation

The Committee observed that the CoG proposed a deletion of the entire clause because it proposes that these duties be undertaken by the sub-County Administrator and ward administrator whose remuneration is currently provided for hence rendering the clause redundant.

Committee Recommendation

The Committee rejected the proposed amendments by the CoG for the reasons provided earlier, that is, the amendments negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill.

9) CLAUSE 10- COMMUNITY GROUPS CONSTITUTIONS

Committee Observations

The Committee observed that the Ministry of Labour proposed various amendments to correct grammatical errors and align inconsistent use of terminology.

Committee Recommendation

The Committee agreed to the proposed amendments to improve the Bill's quality by correcting grammatical errors and aligning inconsistently used terminology.

10) CLAUSE 12 - REJECTION OF APPLICATION

Committee Observations

The Committee observed that –

- (i) CoG proposed a replacing the word Director with CECM as per the earlier reasons that the functions proposed to be done by the Director be assigned to the CECM. It also proposed that the word immoral be inserted after the word unlawful in paragraph (c) because the law should not aid registration of a community group whose object is to promote immorality.
- (ii) The NGO Board proposed that where a proposed name to be used by a Community Group is similar to that of an existing NGO or PBO that registered locally or internationally it should be rejected. It recommended a standard name search mechanism be established.

Committee Recommendation

- i) The Committee agreed to the proposal to include the word “immorality” in 12(c) but rejected the replacement of Director with CECM as per reason provided earlier.
- ii) The Committee further agreed to the proposal made by the NGO Board to protect existing NGOs and PBOs and avert confusion that may arise where different organisations registered under the various legal regimes bear the same name.

11) CLAUSE 13 - PERIOD WITHIN WHICH APPLICATION IS TO BE DETERMINED

Committee Observations

The Committee observed that the Ministry had proposed a new subclause after subclause (2) to provide for appeal mechanism as follows-

3. Where a community group registration has been rejected, the group members can appeal the decision by the Director with the relevant legal authority

Committee Recommendation

The Committee agreed to the proposed amendment as it provides an appeal structure. The Committee proposed the amendment be improved to specify the relevant authority as the same is known.

12) CLAUSE 14- RENEWAL OF REGISTRATION

Committee Observation

The Committee observed that the Ministry had proposed amendment of clause 14(1) by deleting the words “for the renewal of its registration and, thereafter, apply for renewal of its registration at the expiry of a period of one year” and substituting “*the affirmation of its existence.*”

Committee Recommendation

The Committee rejected the proposed amendment as it was unclear and confusing.

13) CLAUSE 16- VOLUNTARY DISSOLUTION

Committee Observation

The Committee observed that the Ministry proposed amendment of clause 16(6) by inserting the words *as per the community group constitution* after the word “settled” to state what happens to the assets of the groups upon voluntary dissolution

Committee Recommendation

The Committee agreed to the proposed amendment as it clarifies what happens to the assets of groups after voluntary dissolution

14) CLAUSE 17- MERGER OF COMMUNITY GROUPS

Committee Observation

The Committee observed that the Ministry had proposed a new subclause to enable change of name upon merger to read

(6) A community group wishing to change name or Constitution, shall issue a notice of change or Constitution of the new community group and submit it to the Director in accordance with Subsection (4) upon its merger

Committee Recommendation

The Committee agreed to the proposed amendment.

15) CLAUSE 26 - DISPUTE RESOLUTION

Committee Observations

The Committee observed that the CoG proposed deletion of 26(2)(3)(4) and replacement with

(2) If a dispute occurs between one community group and another community group, parties shall refer the dispute to the County Executive Committee Member.

The CoG further proposed replacing the word “Director” with “CECM”. In its view, the proposed dispute resolution mechanism is too layered and goes against the principles of expediency and efficiency in administrative action as outlined in Article 47 of the Constitution. It is proposed that any dispute be referred to the County Executive Committee member and appeal preferred to the High Court.

Committee Recommendation

The Committee rejected the proposed amendments by the CoG for the reasons provided earlier, that is the amendments negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill.

16) CLAUSE 32 - TREASURER RESPONSIBLE ACCOUNTS

Committee Observation

The Committee observed that the Ministry proposed insertion of the words “as guided the community group constitution and in consideration with other laws of the land” after the word “treasurer’s control” to highlight the conditions for vacation of office by the treasurer

Committee Recommendation

The Committee agreed to the proposed amendment.

17) CLAUSE 40 - REGULATIONS

Committee Observations

The Committee observed that

- (i) The CoG proposed that the Regulations be made in consultation with the Chairperson of the Council of Governors in the spirit of coordination and consultation between the National Government and County Governments and considering that the principal function rests with the county governments.
- (ii) The Ministry proposed additional crucial matters that require to be provided for in the Regulations, i.e., guidelines on group registration and management, procedures and requirements for reinstatement of groups registration and guidelines on the registration of special interest groups

Committee Recommendation

The Committee agreed to the proposal by the Ministry which improves the Bill. As regards the proposal by the CoG the Committee rejected the same given that the other proposals to assign functions to county governments had been rejected

18) SECOND SCHEDULE

Committee Observation

The Committee observed that the Ministry proposed insertion of a new paragraph on group assets as follows-

12A. Group Assets

The procedures for handling the distribution, disposal and sharing of assets and upon voluntary dissolution.

Committee Recommendation

The Committee agreed to the proposed amendment as it guides that a group’s Constitution should provide for what happens to the assets of the group after voluntary dissolution.

19) GENERAL OBSERVATIONS

The Committee observed that the CoG proposed insertion of a new clause on transfer of records maintained by the National Government to the County governments within six months of commencement of the Act.

Committee Recommendation

The Committee rejected the proposal since the functions shall be undertaken by the National Government.

CHAPTER FIVE


4.0 COMMITTEE GENERAL RECOMMENDATION

The Committee, having considered the Community Groups Registration Bill, 2021 (National Assembly Bill No. 20 of 2021) recommends that the Bill be **agreed to; subject to the amendments contained in the Schedule.**

SIGNED..........DATE.....14/10/2021.....

HON. KABINGA WACHIRA, M.P. (CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

| | |
|---|--|
|  THE NATIONAL ASSEMBLY PAPERS T A B L E D | |
| DATE: 14 OCT 2021 | |
| DAY: | |
| TABLED BY: | |
| CLERK-AT THE-TABLE: | |

**SCHEDULE OF PROPOSED AMENDMENTS TO THE COMMUNITY GROUPS
REGISTRATION BILL, 2021**

CLAUSE 2

THAT, Clause 2 of the Bill be amended—

- a) In the definition of the term “community groups” by inserting the words “Public Benefit Organization, Non-Governmental Organization or” immediately after the words “ but shall not include”
- b) by inserting the following new definitions in proper alphabetical sequence—

“Civil Society Organizations” means organisations that provide technical and advocacy support to the communities but do not provide funding

“Community Group Constitution” means basic rules or by-laws set by a community group to govern the operations of their group or any projects that the groups may undertake’

“Non-Governmental Organisation” has the meaning assigned to it under the Non-Governmental Organizations Act;

“Public Benefits Organization” has the meaning assigned to it under the Public Benefits Organizations Act;

CLAUSE 3

THAT, Clause 3 of the Bill be amended in subclause (2) by inserting the following new paragraph after paragraph (g) —

- (ga) approving, monitoring and evaluating the budget proposal provided by social development committees

CLAUSE 5

THAT, Clause 5 of the Bill be deleted and substituted with the following new clause—

Social
development
committees.

5. (1) There is established, in every sub-county, a committee to be known as the social development committee which shall comprise—

- (a) the sub-county social development officer from the national government;
- (b) two representatives from the county government, one of whom shall be the officer responsible for social development in the county government;

- (c) a representative of the Deputy County Commissioner responsible for the sub-county;
- (d) four representatives of development partners and civil society organisations operating in the county who shall be nominated by the county coordinator of social development;
- (e) five representatives of registered community groups operating in the sub-county who shall be nominated by the community groups; and
- (f) where necessary or practicable, representatives of national government ministries, departments or agencies operating in the sub-county.

(2) The persons under sub-section 1(a),(b),(c),(d) ,(e) and (f) shall be appointed by the county coordinator of social development who shall, in making the appointments, take into ensure ethnic and regional balance and the inclusion of persons with disabilities.

(3) The sub-county department responsible for social development shall provide the secretariat for the social development committee.

CLAUSE 10

THAT, Clause 10 of the Bill be amended in subclause (2) by deleting the words “the constitution of a community group” and substituting therefor the words “a community group constitution”.

CLAUSE 12

THAT, Clause 12 of the Bill be amended—

(a) in paragraph (b) by inserting the words “or immoral” immediately after the word “unlawful” wherever it appears;

(b) in paragraph (e) by inserting the words “Public Benefit Organization or Non-Governmental Organization” immediately after the words “registered community group”

CLAUSE 13

THAT, Clause 13 of the Bill be amended by inserting the following new subclause immediately after subclause (2) —

“(3) A person aggrieved by the decision of the Director may appeal to the Cabinet Secretary in writing”

CLAUSE 16

THAT, Clause 16 be amended in subclause (6) by inserting the words “in accordance with the community group’s constitution” immediately after the word “settled”

CLAUSE 17

THAT, Clause 17 of the Bill be amended by inserting the following new subclauses immediately after subclause (6) —

“(6) A merged community group may change its name or Constitution by issuing a notice of the change of name or Constitution to the Director.

(7) A notice of change of a community group constitution under subsection (6) shall be accompanied by the new community group constitution.

CLAUSE 32

THAT, the Bill be amended in subclause (3) by inserting the words as “guided the community group constitution and in consideration with other written laws” ” immediately after the words “treasurer’s control”

CLAUSE 40

THAT, the Bill be amended by —

(a) deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) procedures, requirements and guidelines on registration, suspension, cancellation and reinstatement of registration of any community group including a special interest group;”

(b) inserting the following new paragraph immediately after paragraph (j) —

“(ja) guidelines on community group management;”

SECOND SCHEDULE

THAT, the Second Schedule to the Bill be amended by inserting the following new paragraph immediately after paragraph 12—

Group Assets

12A. The procedures for handling the distribution, disposal and sharing of assets and upon voluntary dissolution.

HON. JOSPHAT KABINGA WACHIRA, MP
Chairperson, Departmental Committee on Labour and Social Welfare.

ANNEXURE 1: ADOPTION SCHEDULE




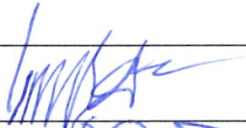
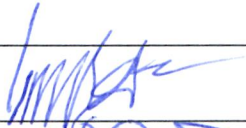

**THE NATIONAL ASSEMBLY
12TH PARLIAMENT - FIFTH SESSION (2021)
DC- LABOUR AND SOCIAL WELFARE**

REPORT ADOPTION SCHEDULE

**REPORT ON THE CONSIDERATION OF COMMUNITY GROUPS REGISTRATION
BILL, 2021**

DATE: 5TH OCTOBER, 2021.

| No. | HON MEMBER | SIGNATURE |
|-----|---|-----------|
| 1. | The Hon. Josphat Kabinga Wachira, M.P – (Chairperson) | |
| 2. | The Hon. Gideon Koske Kimutai, M.P. (Vice Chairperson) | |
| 3. | The Hon. Ronald Kiprotich Tonui, MP | |
| 4. | The Hon. Abdi Mude Ibrahim, MP | |
| 5. | The Hon. Caleb Amisi, M.P. | |
| 6. | The Hon. Charles Kanyi Njagua, MP | |
| 7. | The Hon. Fabian Kyule Muli, MP | |
| 8. | The Hon. Gideon Keter, M.P. | |
| 9. | The Hon. James Onyango K'Oyoo, MP | |
| 10. | The Hon. Janet Marania Teyiaa, MP | |
| 11. | The Hon. Moses Malulu Injendi, M.P | |
| 12. | The Hon. Nelson Koech, M.P | |
| 13. | The Hon. Ole Sankok David, MP | |

| No. | HON MEMBER | SIGNATURE |
|-------|---------------------------------------|---|
| * 14. | The Hon. Omboko Milemba, MP | / |
| 15. | The Hon. Rose Museo, MP | |
| 16. | The Hon. Safia Sheikh Adan, MP |  |
| 17. | The Hon. Titus Mukhwana Khamala, M.P. |  |
| 18. | The Hon. Tom Mboya Odege, MP |  |
| 19. | The Hon. Wilson Sossion, MP |  |

ANNEXURE 2:

THE COMMUNITY GROUP REGISTRATION BILL,
2021

SPECIAL ISSUE

Kenya Gazette Supplement No. 88 (National Assembly Bills No. 20)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2021

NAIROBI, 5th May, 2021

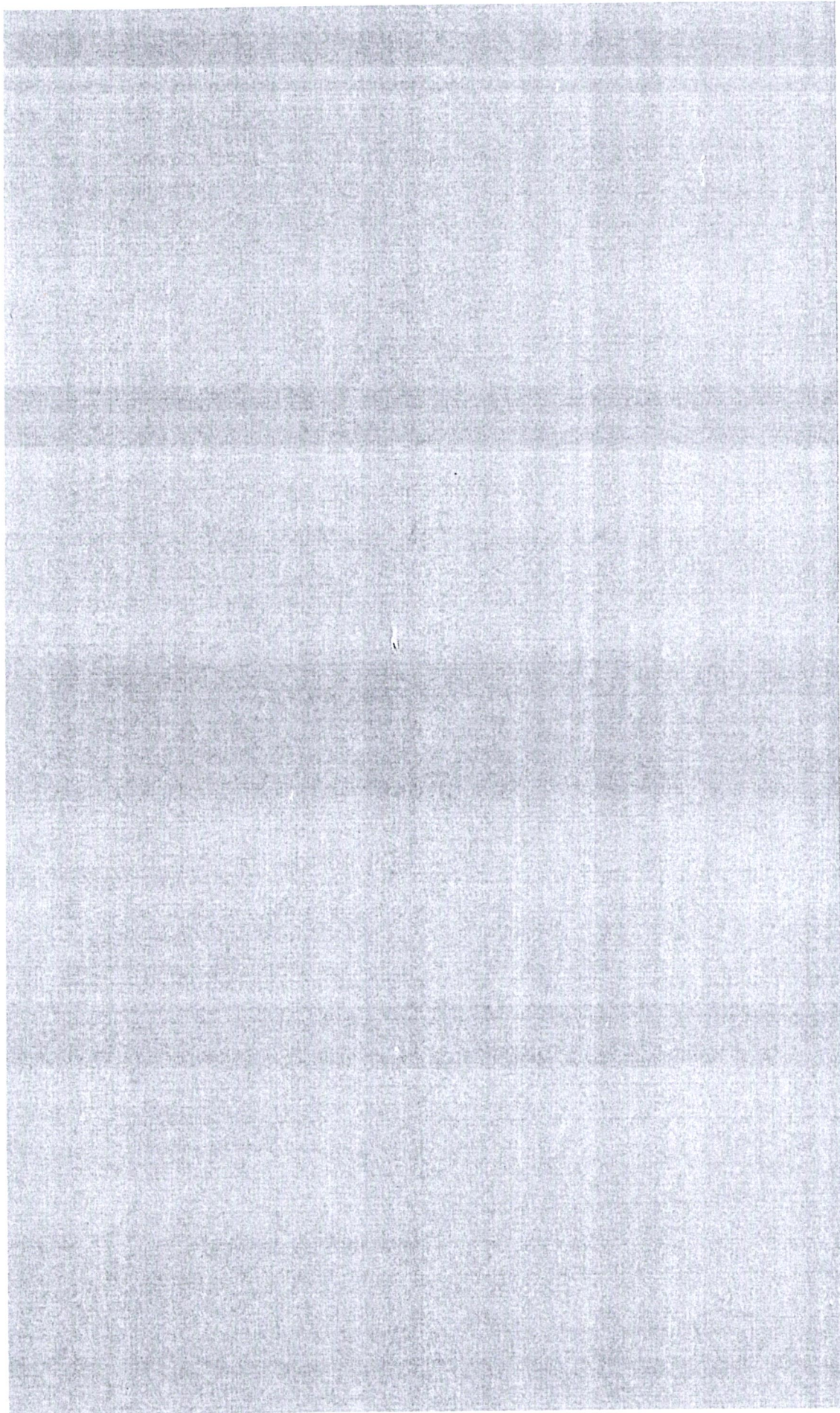
CONTENT

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CORPORATE RATE OF LEGAL SERVICES
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13 MAY 2021
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NAIROBI



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THE COMMUNITY GROUPS REGISTRATION BILL, 2021

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.

PART II—ADMINISTRATION

- 3—Director of Social Development.
- 4—County co-ordinator of social development.
- 5—Social development committees.
- 6—Functions social development committees.
- 7—Business and affairs of social development committees.
- 8—Remuneration of members of social development committees.

PART III—REGISTRATION OF COMMUNITY GROUPS

- 9—Registration of community groups.
- 10—Community group constitutions.
- 11—Special interest community groups.
- 12—Rejection of application.
- 13—Period within which application to be determined.
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- 18—Director to approve merger.
- 19—Amalgamation of community groups.
- 20—Director may make changes in register.

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- 21—General objects of community groups.
- 22—Contact address.

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- 27—Purporting to act as office bearer.
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- 29—Inspection of register of members.
- 30—Confidentiality of members' details.

PART V—FINANCIAL PROVISIONS

- 31—Financial records.
- 32—Treasurer responsible accounts.
- 33—Reports.
- 34—Inspection of accounts and documents.
- 35—Director may request information and financial records.
- 36—Audit of financial records.
- 37—Resource mobilization.

PART VI—GENERAL PROVISIONS

- 38—Obstruction of the Director
- 39—General penalty.
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- 41—Transitional provisions.

FIRST SCHEDULE—THE CONDUCT OF BUSINESS AND AFFAIRS SOCIAL DEVELOPMENT COMMITTEES

SECOND SCHEDULE—MATTERS TO BE PROVIDED FOR IN THE CONSTITUTION ON OF A COMMUNITY GROUP

THE COMMUNITY GROUPS REGISTRATION BILL, 2021

A Bill for

AN ACT of Parliament to provide a regulatory framework for the registration and regulation of community groups and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART—I PRELIMINARY

1. This Act may be cited as the Community Groups Registration Act, 2021. Short title.

2. In this Act, unless the context requires— Interpretation.

“amalgamation” means the arrangement where two or more community groups unite to form a community-based organisation but the constituent community groups retaining their respective, individual identities;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to social development;

“community” means persons resident in the same geographic locality or who are considered as a unit because of their shared common interests;

“community development” means a process where a community takes collective action and generates solutions to common problems;

“community group” means a voluntary association of individuals from the same community which is self-organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit and includes a special interest group, community project and community-based organisation but shall not include groups formed to champion a political cause or contrary to public policy;

“Director” means the Director for Social Development appointed under section 3;

“merger” means the arrangement where two or more community groups dissolve in order to unite into a single community group and the dissolved community groups lose their individual identities;

“office bearer” means a person elected or appointed by

a community group in accordance with that community group's constitution to be responsible for the management of the community group for the specified period and includes persons designated as the chairperson, secretary, treasurer, or any other position as established by its constitution;

“special interest community group” means a community group declared by the Director to be a special interest community group under section 11;

“social development” means the growth of the capabilities and choices of individuals, groups, people and their institutions; and

“social development officer” means a person appointed by the Ministry as a social development officer.

PART II—ADMINISTRATION

3. (1) There shall be a Director of Social Development which shall be an office in the Public Service.

Director of Social
Development.

(2) The Director shall be responsible for—

- (a) mobilising communities to form groups to undertake community projects;
- (b) the registration of community groups;
- (c) the supervision, monitoring and evaluation of community projects by community groups and, on the request of an interested party, the investigation of community group activities;
- (d) the establishment and maintenance of a community development management information system;
- (e) the establishment of capacity-building and training programmes for community groups;
- (f) enhancing partnerships, collaboration and linkages with other persons, groups or organisations for the benefit of the community;
- (g) overseeing the operations of social development committees; and
- (h) performing such other functions as may be assigned by the Cabinet Secretary.

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REPUBLIC OF KENYA

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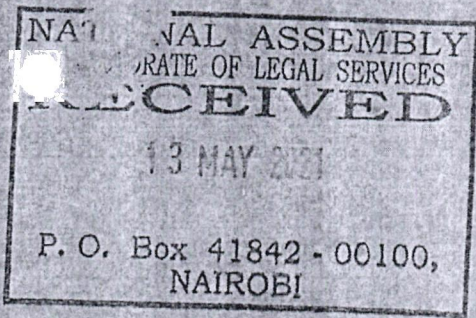
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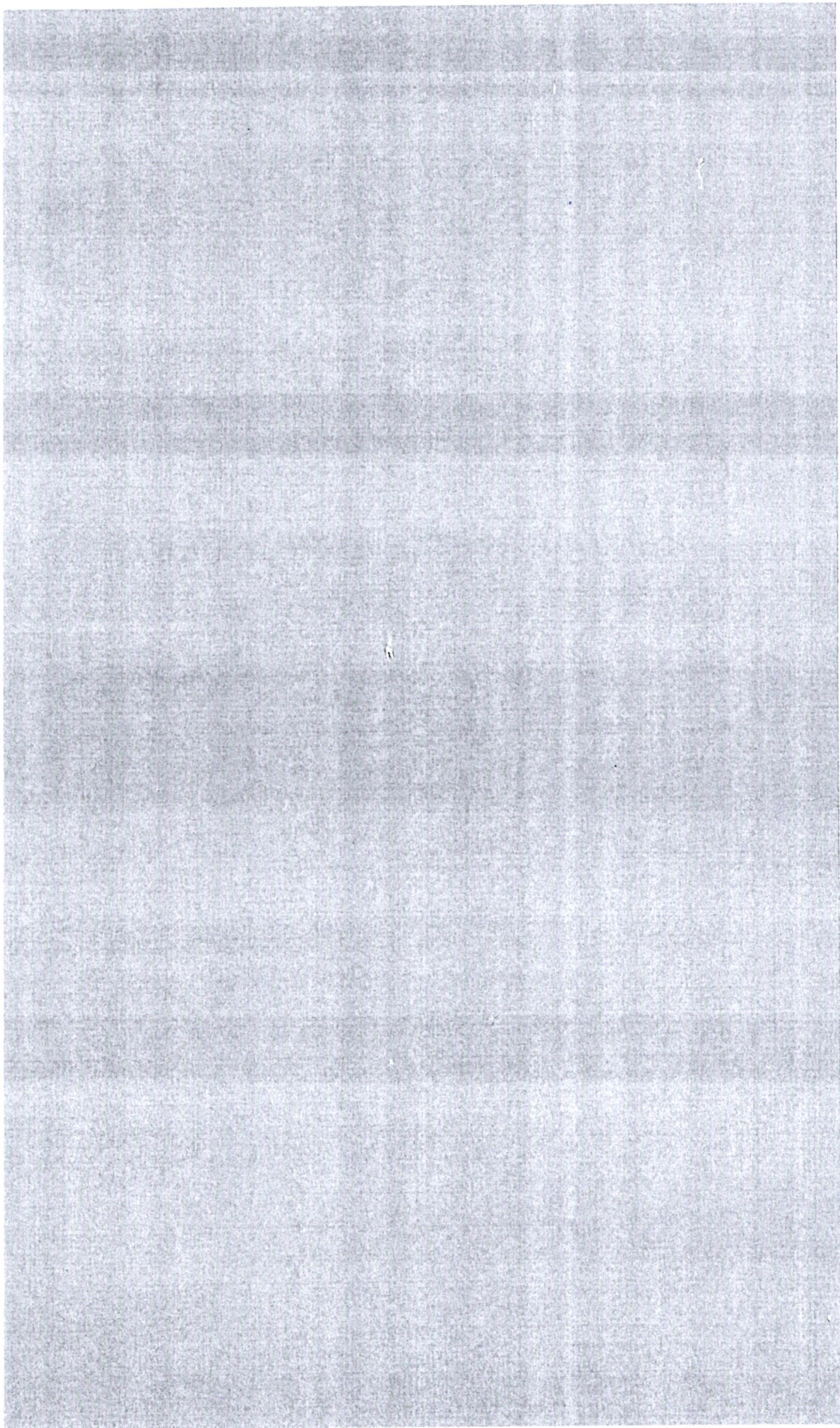
Bill for Introduction into the National Assembly –

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The Community Groups Registration Bill, 2021 629



PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI



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- (b) the registration of community groups;
- (c) the supervision, monitoring and evaluation of community projects by community groups and, on the request of an interested party, the investigation of community group activities;
- (d) the establishment and maintenance of a community development management information system;
- (e) the establishment of capacity-building and training programmes for community groups;
- (f) enhancing partnerships, collaboration and linkages with other persons, groups or organisations for the benefit of the community;
- (g) overseeing the operations of social development committees; and
- (h) performing such other functions as may be assigned by the Cabinet Secretary.

4. (1) The Director shall appoint a county co-ordinator of social development for each county.

County co-ordinator of social development.

(2) The county co-ordinator of social development shall be responsible for the performance of the Director's functions in the county.

(3) Despite the generality of subsection (2), the county co-ordinator of social development shall be responsible for—

- (a) the establishment and supervision of social development committees in the county;
- (b) the nomination of representatives of civil society organisations and social development partners to social development committees; and
- (c) the performance of any other functions as may be assigned by the Director.

5. (1) A county co-ordinator of social development shall establish a social development committee for a sub-county which shall comprise of—

Social development committees.

- (a) the sub-county social development officer;
- (b) the officer responsible for social development in the county government;
- (c) a representative of the Deputy County Commissioner responsible for the sub-county;
- (d) four representatives of development partners and civil society organizations operating in the county who shall be nominated by the county co-ordinator of social development;
- (e) five representatives of registered community groups operating in the sub-county who shall be nominated by the community groups; and
- (f) where necessary or practicable, representatives of national government ministries, departments or agencies operating in the sub-county.

(2) A sub-county social development committee shall include representatives of persons with disability, women and youth.

(3) The sub-county department responsible for social

development shall provide the secretariat for the social development committee.

6. A social development committee shall—

- (a) act as a link between the national government and community groups, communities and other development partners;
- (b) support community mobilisation, and the formation and registration of community groups;
- (c) support capacity building for its members and members of community groups;
- (d) support mobilisation of, and awareness-creation on, social development programmes and emerging issues in the community;
- (e) participate in setting priorities on the types of social development programmes and projects to be implemented by community groups;
- (f) provide information on current and emerging social and community development needs;
- (g) make recommendations for community groups for material, capacity-building and financial support;
- (h) support the Director in the monitoring, evaluation and research on community development programmes at the sub-county level;
- (i) support in dispute resolution and management of community groups;
- (j) support social impact assessment and social risk assessment processes at sub-county level; and
- (k) perform such other functions as may be assigned by the Director.

Functions of social development committees.

7. (1) The business and affairs social development committees shall be conducted in accordance with the First Schedule.

Business and affairs of social development committees.

(2) Except as provided in the First Schedule, social development committees may regulate their own procedure.

8. The Cabinet Secretary shall, on the advice of the Salaries and Remuneration Commission, determine the allowances payable to the members of social development committees for out-of-pocket expenses incurred in the performance of their functions.

Remuneration of members of social development committees.

PART III—REGISTRATION OF COMMUNITY GROUPS

9. (1) A group of persons may, if they so wish, apply in the prescribed form to the Director for registration as a community group.

Registration of community groups.

(2) A group shall qualify for registration under this Act if—

- (a) the members are adults;
- (b) the members have a common purpose; and
- (c) the group comprises of—
 - (i) at least ten persons, or
 - (ii) in the case of a special interest community group, at least five persons.

(3) The Director may require additional information from an applicant under this section or conduct an investigation as may be necessary before approving or rejecting the application.

(4) The Director may prescribe fees in respect of applications under this section.

10. (1) An application under section 9 shall be accompanied by a community group constitution.

Community group constitutions.

(2) A rule or a purpose within the constitution of a community group that is inconsistent with the Constitution, this Act or any written law shall have of no effect to the extent of the inconsistency.

(3) The information contained in the Model Community Group Constitution set out in the Second Schedule shall be sufficient for the purposes of this Act and a community group may adopt the Model Community Group Constitution for its own purposes.

(4) A community group which amends its constitution shall submit the amended constitution to the Director within one month of the amendment.

11. (1) The Director may, upon application and payment of fees prescribed by the Director, declare a community group to be a special interest community group.

Special interest
community
groups.

(2) A special interest community group shall comprise of individuals who share a common interest that, due to its unique nature of that interest, condition or need, has failed to raise a large membership within the community.

12. The Director may reject an application under section 9 if—

Rejection of
application.

- (a) the applicants have not complied with the requirements of this Act;
- (b) the Director has reasonable cause to believe that the applicants have among their objects, the pursuit of an unlawful cause or purpose that is prejudicial to the peace, welfare or good order of the community or is likely to carry out unlawful actions;
- (c) the constitution of the community group is inconsistent with the Constitution or any other written law;
- (d) the applicants have submitted false or misleading information; or
- (e) the proposed name of the community group is identical to or resembles the name of a registered community group as to be likely to mislead the public as to its nature or identity.

13. (1) The Director shall, within fourteen days of receiving an application under section 9, either register or refuse to register a community group.

Period within
which application
to be determined.

(2) Where the Director refuses to register a community group, the Director shall notify the applicants of the refusal in writing setting out the reasons for refusal.

14. (1) A community group registered under this Act may, on the expiry of two years after its registration, apply to the Director in the prescribe form and after paying the prescribed fees for the renewal of its registration and, thereafter, apply for renewal of its registration at the expiry of a period of one year.

Renewal of
registration.

(2) An application under subsection (1) shall be made at least two months before the date of the application for renewal of registration.

(3) An application under subsection (1) shall be accompanied by a report of the community group's activities for the two years immediately preceding the application, its financial report and any other report the Director may require.

(4) The Director shall, within fourteen days of receiving an application under subsection (1), either renew the registration or refuse to renew the registration.

(5) Where the Director refuses to renew the registration of a community group, the Director shall notify the applicants of the refusal in writing setting out the reasons for refusal.

(6) Where the Director is satisfied that the applicants qualify for the renewal of registration, the Director shall approve the application and renew the community group's certificate of registration.

15. (1) The Director may cancel the registration of a community group if—

Cancellation of registration.

- (a) the community group fails to comply with this Act;
- (b) the members of the community group fail to comply with the community group's constitution;
- (c) the community group fails to submit any information required under this Act or requested by the Director in accordance with this Act; or
- (d) the community group was fraudulently registered.

(2) Before the Director cancels the registration of a community group, the Director shall—

- (a) give the office bearers of the community group at least fourteen days' notice of the intention to cancel the group's registration; and
- (b) give the office bearers and members of the community group the opportunity to make representations to the Director as to why the group's registration should not be cancelled.

16. (1) A community group may dissolve itself voluntarily if the members pass a resolution for voluntary dissolution in accordance with the community group's constitution.

Voluntary
dissolution

(2) A community group that passes a resolution for voluntary dissolution shall notify the Director in writing of the voluntary dissolution.

(3) A notification under subsection (2) shall be signed by at least two-thirds of the members and be accompanied by—

- (a) the community group's certificate of registration;
- (b) a copy of the minutes and the resolution of the meeting recommending the dissolution of the community group stating—
 - (i) the community group's intention to be voluntarily dissolved;
 - (ii) the reasons for the resolution to voluntarily dissolve; and
 - (iii) a date, at least two months after the date of the notice, on which the dissolution is intended to take effect.

(4) On receiving the notice under subsection (2), the Director shall—

- (a) confirm whether or not the resolution has been made in accordance with the community group's constitution;
- (b) where the notice is in order, cancel the certificate of registration of the community group;
- (c) amend the register to indicate that the community group has been voluntarily dissolved; and
- (d) notify the community group in writing of its dissolution and the effective date of the dissolution.

(6) The Director shall, before acting in accordance with subsection (4), ensure that the assets of the community group have been properly distributed any outstanding claims have been settled, and the Director may impose such conditions as may be necessary for the

protection of the welfare of the members of the group or the community.

(7) A community group shall be deemed to have dissolved voluntarily if the community group fails to renew its registration for a period of four years.

17. (1) A community group may, in accordance with its constitution, pass a resolution to merge with another community group.

Merger of community groups.

(2) A community group shall not merge with another community group unless at least three quarters of all the members of each of the community groups agree to the merger.

(3) A merger of community groups shall not take effect unless—

(a) the community group has settled or made arrangements to settle its debts and its creditors have acknowledged settlement of their dues or the arrangement to settle their dues;

(b) the claims of the members of the community group who have not agreed to the merger and have exercised their option to leave the group have been met in full or otherwise satisfied;

(c) information of the proposed merger and details about the settlement of claims of members and creditors has been submitted to the Director; and

(d) the community groups proposing to merge have surrendered their certificates of registration to the Director.

(4) Where community groups merge, they shall cease to exist as independent community groups and their assets and liabilities shall be transferred to the merged group.

(5) A resolution passed by a community group under subsection (1) shall be sufficient to vest the assets held or liabilities incurred by or on behalf of the community group on the members of the merged community group.

18. (1) The Director shall, save for just cause, approve the merger of community groups where the groups have complied with the provisions of section 17.

Director to approve merger.

(2) The Director shall on approval of a merger of community groups—

- (a) enter into the register the name and relevant details of the new community group;
- (b) amend the register with respect to the merging community groups to indicate that they have merged; and
- (c) cancel the certificates of registration of the community groups that have merged.

19. (1) Two or more community groups may, in accordance with their constitutions, pass resolutions to amalgamate.

Amalgamation of
community
groups

(2) Each community group that resolves to amalgamate with another shall apply to the Director in the prescribed form.

(3) An application under subsection (2) shall be accompanied by the certificates of registration of the community groups that intend to amalgamate.

(4) Where the Director has approved the amalgamation of community groups, the Director shall issue to the resulting community-based organisation with a certificate of registration.

(5) The Director shall—

- (a) enter into the register the relevant details of the resulting community-based organisation;
- (b) amend the register with respect to the amalgamating community groups; and
- (c) cancel the certificates of registration of the amalgamating community groups.

20. (1) The Director may, upon reasonable notice given by a community group, make changes or corrections relating to any entry in the register with respect to the community group.

Director may
make changes in
register

(2) A notice issued under this section shall be accompanied by—

- (a) a resolution passed by a majority of the members of the community group approving the proposed changes; and
- (b) a list of members who were present at the meeting at which the resolution was passed.

PART IV—REGULATION OF COMMUNITY GROUPS

21. A community group may, in accordance with its constitution—

General objects of community groups.

- (a) invest and deal with funds of the community group not immediately required for its objects;
- (b) raise or borrow money on any terms and in any manner as resolved by a majority of its members;
- (c) jointly secure the repayment of funds raised or borrowed by the community group or the payment of a debt or liability of the community group by giving mortgages, charges or securities on or over all or any of the property of the community group; and
- (d) do anything that is incidental or conducive to the attainment of the purposes of the powers of the community group.

22. (1) A community group shall establish and maintain an official physical address to which all members shall have access and all correspondence, notices and similar communication with the community group shall be delivered.

Contact address.

(2) All communication and notices required under this Act shall be delivered to the physical address established under subsection (1).

(3) A community group shall, within one month of the change of its physical address, notify the Director and the members of the group of the change and the details of the new address.

23. A community group shall ensure its office bearers assume office in accordance with the provisions of this Act and its constitution.

Officer bearers.

24. (1) A person who has been convicted of a crime involving fraud or dishonesty shall not, within a period of five years from the date of conviction, be eligible to be appointed or elected—

Restriction of appointment of certain office bearers.

- (a) as an office bearer of a community group;
- (b) to any office the holder of which is responsible for the collection, disbursement, custody or control of the funds of a community group or for a community group's accounts; or
- (c) as an auditor of a community group.

(2) A member of a community group shall not be elected or appointed as the auditor of the community group.

25. (1) A community group shall notify the Director in writing of any changes in an office or title of an office of the community group within one month of the change.

Change of office bearers or title of office.

(2) A notice under subsection (1) shall be accompanied—

- (a) by a resolution of the community group signed by three office bearers of the community group;
- (b) by a signed attendance list of the members who were present at the meeting at which such change was adopted;
- (c) by evidence that the meeting had quorum in accordance with the constitution of the community group; and
- (d) by the minutes of the meeting at which the change was adopted.

(3) The Cabinet Secretary shall make regulations prescribing the procedure and fees under this section.

26. (1) Each community group shall, in its constitution, prescribe mechanisms for the resolution of disputes between one member of the community group and another.

Dispute resolution.

(2) If a dispute occurs between one community group and another community group, parties shall refer the dispute to the sub-county social development committee which shall hear and determine the dispute expeditiously.

(3) Where a sub-county social development committee fails to determine a dispute that has been referred to it under subsection (2), it shall refer the dispute to the relevant county social development committee which shall hear and determine the dispute expeditiously.

(4) Where a county social development committee fails to determine a dispute referred to it under subsection (3), it shall refer the dispute to the Director who shall hear and determine the dispute expeditiously.

(5) On receipt of a reference under subsection (2), the Director may—

- (a) investigate the facts and circumstances of the dispute;
- (b) summon any member of the community groups for the purpose of enquiring into the facts and circumstances of the dispute; and
- (c) call for such documents as may be necessary to ascertain the facts and circumstances of the dispute.

(6) The Director shall, within fourteen days of the referral of a dispute under subsection (4), determine the dispute and notify the parties of the determination in writing.

(7) Any person who refuses to honour any summons by the Director under subsection (5) (b) commits an offence and, on conviction, shall be liable to a fine of not more than ten thousand shillings or to imprisonment for a term not exceeding six months or both.

(8) A person aggrieved by a decision of the Director under this section may appeal to the High Court.

27. (1) A person commits an offence if that person—

Purporting to act
as office bearer.

- (a) has not been duly appointed or elected as an office bearer of a community group and acts or purports to act as an office bearer of that community group; or
- (b) having been appointed or elected as an office bearer of a community group other than at the time of the formation of the community group, acts as an office bearer after the end of the period agreed by the members without giving a notification to the Director.

28. (1) A community group registered under this Act shall keep a register of its members in such form as may be prescribed, and shall cause to be entered in the register the name and contact address of each member and the date of admission into membership.

Register of members.

(2) A community group which contravenes subsection (1), and every office bearer commits an offence and—

- (a) the community group shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings or suspension for such period as the offence continues or to both; and
- (b) every office bearer shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

(3) Every community group shall submit to the Director a list of its members—

- (a) whenever required by the Director upon reasonable notice; and
- (b) once every two years or within such longer or shorter period as may be specified by the Director in any particular case for reason given in writing.

(4) A community group which fails to submit an updated list of members within the specified period will attract a penalty for late submission.

(5) A community group shall enter in its register the date on which a person ceases to be a member of the community group within fourteen days from that date.

29. A member of a community group shall, subject to the constitution of the community group, have the right to inspect the register of members upon reasonable notice.

Inspection of register of members.

30. (1) Subject to Article 33 of the Constitution, a person shall not disclose any personal information obtained from the register of members of a community group unless the information—

Confidentiality of members' details.

- (a) is directly related to the management of the community group or the purpose for which the community group was established; and
- (b) is not prohibited by the constitution of the community group.

(2) A person who violates the provisions of subsection (1) commits an offence.

PART V—FINANCIAL PROVISIONS

31. (1) A community group shall maintain financial records that—

Financial records.

- (a) correctly record and explain its transactions, its financial position and performance; and
- (b) enable the preparation of true and fair financial statements.

(2) A community group shall retain its financial records for a period of seven years after the transactions covered by the records are completed.

32. (1) The constitution of a community group shall provide for the designation of a member of the community group as its treasurer or person responsible for its financial affairs including the maintenance of the community group's financial records.

Treasurer responsible accounts

(2) A person designated as the treasurer of a community group shall be responsible for the accounts of the community group, the collection, disbursement, custody and control of its funds and shall—

- (a) at least once in every year at such time as may be specified in the group constitution;
- (b) at any other time as may be required to do so by a resolution of the members of the community group; and

(c) upon resigning or otherwise vacating office;

render to the community group and its members a full and true account of all monies received and paid during the period which has elapsed since the date of assuming office or, if such person has previously rendered an account, since the last date upon which that person rendered such account, and of the monies remaining in the treasurer's hands at the time of rendering the account, and of all other property of the community group entrusted to that person's custody or under that person's control.

(3) After an account has been rendered under subsection (2), the treasurer shall, if the treasurer is resigning or vacating office or required to resign or vacate office, hand over to the succeeding treasurer, the monies as appear to be due from the treasurer, and all bonds, securities, effects, books, papers and property of the community group in the treasurer's hands or otherwise under the treasurer's control.

33. (1) Every community group shall, once every two years, furnish the Director, by the 30th June of the year in which it is made, a report, which shall provide for the community group's—

Reports.

(a) activities;

(b) financial affairs;

(c) any other matter as may be required by the Director.

(2) A report under this section shall be adopted at the community group at its annual general meeting before being submitted to the Director under subsection (1).

(3) Where a community group is unable to comply with subsection (1), it shall notify the Director stating the reasons it is unable to comply.

(4) Any person who willfully makes or orders or causes or procures to be made any false entry in or omission from a report made under this section commits an offence.

(5) The Director may levy a late-filing fee on a community group that submits a report required under this section out of time without notifying the Director of the

delay in accordance with subsection (3).

(6) The Director may suspend the certificate of a community group that fails to submit a report required to be submitted under this section until the community group submits the report.

34. A community group shall, upon reasonable notice, make its financial records and related documents, and the register of members of the community group available—

Inspection of accounts and documents.

- (a) for inspection by any office bearer or member of the community group at such place and at such times as may be provided for in the constitution of the community group;
- (b) for inspection by the Director, or by any person authorized by the Director in writing in that behalf, at the office of the Director at any reasonable time specified; and
- (c) when applying for the renewal of its certificate of registration.

35. (1) Where the Director has reasonable cause to believe that circumstances have arisen which render it expedient for the proper performance of the Director's functions under this Act to do so, the Director may require in writing that a community group furnish the Director with—

Director may request information and financial records.

- (a) a copy of the group's constitution;
- (b) a complete list of the group's office bearers and members;
- (c) the minutes of any meeting held by the group at which office bearers were elected or appointed;
- (d) the financial records of the group covering such period as the Director deems necessary for the purpose for which the request is made; and
- (e) such other accounts, returns and other information as the Director may request.

(2) A community group shall comply with the request given under subsection (1) within such period as may be specified in the request or within such longer period as the Director may, upon request, allow.

(3) A community group which has had its registration cancelled for failing to comply with the provisions of this Act concerning registration or fails to comply with a request to furnish financial records under this section, shall not be registered again, and no community group which, in the opinion of the Director, is a successor of such community group shall be registered, unless the application for registration is accompanied by financial records.

(4) If any information or document furnished to the Director under this section is false, incorrect or incomplete in any material particular community group shall be deemed to have failed to comply with the provisions of this section.

36. The Director may direct that the financial records of a community group be audited at the community group's cost if the audit is expedient and necessary for the resolution of a dispute between a member of the community group and another.

Audit of financial records.

37. (1) A community group may mobilize resources for the benefit of its members or the community in which it operates.

Resource mobilisation.

(2) A person who diverts or misappropriates resources belonging to a community group for any other use other than for the purposes for which the community group was established commits an offence and, on conviction, shall be liable to a fine not exceeding three million shillings or imprisonment for a term not exceeding two years or to both.

(3) The Cabinet Secretary may issue guidelines for resource mobilisation by community groups and a person who carries out resource mobilisation in contravention of such guidelines commits an offence.

PART VI—GENERAL PROVISIONS

38. Any person who obstructs the Director in carrying out any functions under this Act commits an offence.

Obstruction of the Director.

39. A person who commits an offence under this Act for which no penalty is prescribed shall be liable to a fine not exceeding ten thousand shillings or a community service order for a period not exceeding three months.

General penalty.

40. (1) The Cabinet Secretary may make regulations for the better carrying out of the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations prescribing—

- (a) the forms to be used for the purposes of this Act;
- (b) the particulars to be included in—
 - (i) applications or notifications to the Director;
 - (ii) certificates of registration issued by the Director;
- (c) the procedures and requirements for registration, suspension and cancellation of registration of any community group;
- (d) information to be included in the register of a community group;
- (e) the records to be kept by a community group;
- (f) charges, fees or other payments under this Act;
- (g) guidelines for community mobilisation;
- (h) the guidelines for resource mobilisation;
- (i) dispute resolution procedures under this Act;
- (j) guidelines for the establishment of social development committees; and
- (k) any other matter or thing required to be prescribed to give effect to the provisions of this Act.

41. (1) Every community group which was, immediately before the commencement of this Act, registered as a community group by the national Government shall, at the commencement of this Act, be deemed to have been registered under this Act:

Transitional provisions.

Provided that a community group to which this section applies, shall within a period of one year after the commencement of this Act, put in place measures necessary to ensure compliance with the provisions of this Act.

FIRST SCHEDULE

(s. 7)

THE CONDUCT OF BUSINESS AND AFFAIRS OF
SOCIAL DEVELOPMENT COMMITTEES

1. (1) The National, county and sub county Committees shall meet at such place within their area of jurisdiction as the chairperson may determine and the meetings shall be convened by the chairperson. Meetings.

(2) The committees shall have at least four meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting.

(3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member by the Director.

(4) The chairperson may, at his or her discretion or at the written request made by at least half of the members of the Committee and within seven days of the request, convene an extraordinary meeting at such time and place and he or she may appoint.

(5) Meetings shall be presided over by the chairperson or in his or her absence by the vice-chairperson.

(6) The members of a Committee shall elect a vice-chairperson from among themselves—

(a) at the first sitting of the Committee; and

(b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.

(7) Where the chairperson or vice-chairperson is absent, the members shall appoint from among themselves, a person to chair the meeting of the Committee.

(8) The Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Committee.

2. (1) If any person has a personal or fiduciary interest in a project, proposed contract or any matter before the Committee, and is present at a meeting of the

Conflict of
interest.

Committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

3. (1) Subject to subparagraph (2), the quorum of the Quorum. Quorum of a meeting shall not be less than half of the appointed members of the Committee.

(2) Where the persons present at a meeting of the Committee do not constitute the quorum necessary to hold a meeting under this Act or where by reason of absence of a member from a meeting, the number of members present falls below the quorum necessary to hold a meeting, the Committee shall postpone the consideration of the matter in question until there is a quorum.

4. A question before the Committee shall be decided by simple majority of the members present and voting and the chairperson shall, in the case of an equality of votes, have a casting vote. Voting.

5. The Committee shall—

Rules of Procedure and minutes.

(a) determine rules of procedure for the conduct of its minutes business; and

(b) keep minutes of its proceedings and decisions.

SECOND SCHEDULE**(s. 10(3))****MATTERS TO BE PROVIDED FOR IN THE CONSTITUTION
OF A COMMUNITY GROUP****Title of the Constitution**

1. Indicate name of group.

Purpose of the community group

2. State the reason for which the community group has been established.

Address of the Group/Project

3. Physical and postal addresses of the project

Goal

4. State the broad objectives of the community group

Specific Objectives

5. State the means of achieving the goal of the community group

Values

6. A statement of the values of the group

Group activities

7. A statement of the group's activities

Membership

8. Including eligible members, nature of membership (open or closed), procedure of joining, procedure of removal, procedure of departure, duties of member, rights of member, discipline of members, etc.

Office bearers

9. Including chairperson, vice-chairperson, secretary and treasurer; election or appointment of office bearers; removal or resignation of office bearers; qualification or disqualification to be office bearers; functions or roles of office bearers; etc.

Tenure of office bearers

10. Term of holding office; whether eligible for a new term or not; etc.

Group finances

11. Specific roles and powers of treasurer; sources of funds of the community group; the management and accounting for funds of the community group; banking arrangements for the funds of the community group; maintenance of financial records of the community group; auditing of the financial records of the community group; financial reports of the community group; etc.

Utilization of funds

12. Authorised expenses of the community group including remuneration or allowances of employees or staff of the community group; operational expenses of the community group; statutory expenses of the community group such as taxes; etc.

Record Management

13. The types of records that the community group should keep including members register, member shares register, payment vouchers, cashbook, minute book/file financial statements, etc.

Meetings

14. Type and frequency of meetings; procedure at meetings; agenda of meetings; records relating to meetings; procedure for convening of meetings; quorum at meetings; authorised business of meetings; adoption of certain reports at specified meetings; etc.

Elections

15. Eligibility to vote; method of voting; supervision of elections; notice of election; reporting and confirmation of election results; special dispute resolution procedures regarding elections; transitional procedures relating to elections, etc.

Dispute resolution

16. The procedures for handling disputes or conflicts within the group; the acceptable methods of dispute resolution; notice periods relating to disputes or conflicts in the community group; etc.

Amendment of the community group constitution

17. Notice periods relating to amendments to the community group constitution; quorum for amending the community group constitution; procedure for proposing amendment of community group constitution; transitional procedures regarding amendments; adoption of amendments; etc.

Indemnity

18. Office bearers protected from liability for activities done on behalf of the community group in good faith; group liable to third parties to pay compensation for activities of the group that cause loss, damage or injury to the third parties; etc. Office bearers liable for loss, damage or injury caused by acts done in contravention of community group constitution or without authorization if authorization was required or withheld by members of the group.

Dissolution

19. Circumstances under which community group may be dissolved; procedure for the dissolution of community group; notice periods in respect of the dissolution of community group; quorum for the dissolution of community group; transitional procedures during dissolution; treatments of assets and liabilities of community group after dissolution; etc.

Commitment clause

20. Community group members should sign and commit to the provisions of the community group constitution.

ANNEXURE 3:

MINUTES OF COMMITTEE SITTINGS ON THE
CONSIDERATION OF THE BILL

MINUTES OF THE 65TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY, 5TH OCTOBER, 2021 AT 11.30 A.M. IN THE COMMITTEE ROOM ON 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS.

PRESENT

1. **The Hon. Josphat Kabinga Wachira, M.P.** – Chairperson
2. **The Hon. Gideon Koske Kimutai, M.P.** – Vice-Chairperson (*Virtual attendance*)
3. The Hon. Janet Marania Teyiaa, M.P.
4. The Hon. Moses Malulu Injendi, M.P.
5. The Hon. Ronald Kiprotich Tonui, M.P.
6. The Hon. Caleb Amisi, M.P. (*Virtual attendance*)
7. The Hon. Gideon Keter, M.P. (*Virtual attendance*)
8. The Hon. Tom Mboya Odege, M.P.
9. The Hon. Omboko Milemba, M.P.
10. The Hon. Safia Sheikh Adan, M.P.
11. The Hon. Wilson Sossion, M.P.

APOLOGY

1. The Hon. James Onyango K'Oyoo, M.P.
2. The Hon. Rose Museo Mumo, M.P.
3. The Hon. Abdi Mude Ibrahim, M.P.
4. The Hon. Charles Kanyi Njagua, M.P.
5. The Hon. David Ole Sankok, M.P.
6. The Hon. Fabian Kyule Muli, M.P.
7. The Hon. Nelson Koech, M.P.
8. The Hon. Titus Mukhwana Khamala, M.P.

IN ATTENDANCE

Committee Secretariat

- | | | |
|--------------------------|---|------------------------|
| 1. Ms. Susan Maritim | - | Senior Clerk Assistant |
| 2. Mr. John Mugoma | - | Clerk Assistant II |
| 3. Ms. Lynette Otieno | - | Legal Counsel I |
| 4. Mr. James Muguna | - | Research Officer II |
| 5. Ms. Sheila Chebotibin | - | Sergeant-At-Arms |
| 6. Mr. Nickson Kibet | - | Audio Officer |

AGENDA

1. Prayers;
2. Preliminaries;
 - i. Introductions;
 - ii. Communication from the Chairperson;
 - iii. Confirmation of Minutes
 - iv. Matters Arising
3. **Consideration and Adoption of Committee Report on Community Groups Registration Bill, 2021**
4. Any Other Business;
5. Adjournment.

MIN.NO. DC/LSW/2021/336 PRELIMINARIES

The meeting commenced at 11.30 am. with the Prayer followed by welcoming remarks and introductions.

The Chairperson then welcomed Committee Members and the Secretariat to the meeting and informed the meeting that the retreat with Child Welfare Society that was scheduled to take place in Mombasa from 6th to 9th October was suspended owing to lack of funds in the National Assembly. He further informed the Members that the CWSK had agreed to sponsor the activity in Naivasha from 14th to 17th October, 2021. Members were requested to confirm attendance.

MIN.NO. DC/LSW/2021/337 ADOPTION OF THE AGENDA

The Agenda was adopted having been proposed and seconded by the Hon. Moses Malulu Injendi, M.P. and the Hon. Safia Sheikh Adan, M.P. respectively.

MIN.NO. DC/LSW/2021/338 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 62nd, 63rd and 64th Sittings were read and confirmed as true record of the proceedings as follows –

- i. Minutes of the 62nd sitting held on 21st September, 2021 were confirmed as a true record of the deliberations having been proposed by Hon. Safia Sheikh Adan, M.P. and seconded by Hon. Tom Mboya Odege, M.P..
- ii. Minutes of the 63rd sitting held on 23rd September, 2021 were confirmed as a true record of the deliberations having been proposed by Hon. Ronald Kiprotich Tonui, M.P. and seconded by Hon. Safia Sheikh Adan, M.P.
- iii. Minutes of the 64th sitting held on 28th September, 2021 were confirmed as a true record of the deliberations having been proposed by Hon. Hon. Safia Sheikh Adan, M.P. and seconded by Hon. Ronald Kiprotich Tonui, M.P.

MIN.NO. DC/LSW/2021/339 MATTERS ARISING

No Matters Arose

MIN.NO. DC/LSW/2021/340 CONSIDERATION OF THE REPORT ON THE COMMUNITY GROUPS REGISTRATION BILL, 2021

The Committee considered the Report on the Community Groups Registration Bill, 2021 and made the following Observations and recommendations –

LONG TITLE

Committee Observations

The Committee observed –

- (i) That the Council of Governors (CoG) proposes the provision be amended to read as follows
“AN ACT of Parliament to provide a regulatory framework for the registration and regulation of community groups and to give effect to the fourth schedule part ii (14) of the Constitution and for connected purposes”

(ii) The Committee observed that the long title as provided in the Bill was sufficient;

1) CLAUSE 2- INTERPRETATION

Committee Observations

The Committee observed –

(i) That the Non-Governmental Organisations Coordination Board proposes amendment of the definition of “community group” under Clause 2 as follows;

“community group” means a voluntary association of individuals from the same community which is self-organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit and includes a special interest group, community project and community-based organisation but shall not include a Public Benefit Organization, NGO or groups formed to champion a political cause or contrary to public policy.”

The reason for the proposed amendment was because from the definition as proposed in the Bill, it is clear that community groups are not limited to charitable or public benefit objectives as may be with the NGOs Act or PBOs Act. The definition of “community group” is different from the definition of a “Non-Governmental Organization” as provided for under the NGOs Co-ordination Act of 1990 which states that an NGO is a private voluntary grouping of individuals not operated for profit or other commercial purposes but which have organised themselves Nationally or Internationally for the benefit of the public at large and for the promotion of social welfare, development charity or research in the area inclusive of, but not restricted to health, relief, agriculture.

Some of the community groups that may qualify for registration under this proposed law include social groups such as resident associations, book clubs and other shared interest groups. Previously, for such groups to be registered, they would either be societies or public benefit organisations. Therefore, NGOs and PBOs may be excluded explicitly in the definition of community groups.

(ii) The CoG proposed new definitions-

- (a) of the term “County Executive Committee Member” to mean “the County Executive Committee Member responsible for social development in the county”,
- (b) “office of the Sub – county administrator” to mean “the office of the sub county administrator established under sec 50 of the county Governments Act”
- (c) “Office of the Ward administrator” means the office of the Ward administrator established under section 51 of the county Government Act
- (d) Amend the definition of social development officer to “social development officer” means an officer in an office established by the County Public Service Board as such.

COG submitted that Community management entails mobilization, registration, supervision etc. which is a function of the county governments and should be undertaken by a county structure. The new definitions are introduced as the structures are key in implementation of the Act. These structures shall implement what is proposed in the bill to be undertaken by the social development Committee.

- (iii) Regarding the concerns raised by the COG, the Policy on the subject matter falls within the jurisdiction of the Ministry of Labour and Social protection which, currently registers social development groups through its social development officers. The current registration of such groups is done administratively because there isn't a legislative framework for the same. The proposed Bill is intended to address this gap in the legislative framework. It also complements the NGO Coordination Act, the PBO Act and the Societies Act.
- (iv) Further, Article 191 of the Constitution allows, in certain circumstances, national legislation to supersede county legislation, if certain conditions are satisfied. These conditions include that the national legislation shall apply uniformly throughout Kenya [Article 191(2)(a)] and the national legislation is necessary for the maintenance of national security [Article 191(3)(c)].
- (v) There is no definition of the term “Civil Society Organisation” yet the terminology is often misunderstood and erroneously used.

Committee Recommendation

- (i) The Committee agreed to the proposed amendment to “community group” as proposed by the NGO Board in order to exclude NGOs and PBOs explicitly in the definition of community groups.
- (ii) The Committee rejected the proposed amendments by the COG as they would negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill. The current registration of such groups is done administratively by the Ministry of Labour and Social protection because there isn't a legislative framework for the same and the Bill seeks to address this.
- (iii) The Committee agreed to the proposed definition of the terms “Civil Society Organisation” and “Community Group Constitution” as proposed by the Ministry of Labour and Social protection in order to bring clarity to the meaning of these terms.

2) CLAUSE 3- DIRECTOR OF SOCIAL DEVELOPMENT.

Committee Observations

The Committee observed –

- (i) that the COG had proposed for a County Governor to designate a County Executive Committee Member (CECM) to be responsible for Social Development and for the Bill to be amended to the effect that the functions to be undertaken by the Director of Social Development shall be instead undertaken by the said CEC Member. In its view, the functions of the Director of Social Development are assigned to the county governments and should be undertaken by an officer at the county government. The CECM may perform these functions alongside any other functions assigned to the office by the Governor, the County Executive Committee, national legislation or county legislation.
- (ii) The ministry proposed inclusion of a new paragraph after paragraph (g) as follows-
 - (ga) *approving, monitoring and evaluating the budget proposal provided by the Social Development Committee”*

Committee Recommendations

- i) The Committee rejected the proposed amendments by the COG as they would negate the purpose and object of the Bill by assigning functions to a different organ from the one intended in the Bill. The current registration of such groups is done administratively by the Ministry Labour and Social protection because there isn't a legislative framework for the same and the Bill seeks to address this. Accordingly, the Director of Social Development should continue carrying out the functions under clause 3.
- ii) The Committee agreed to the proposed amendment by the Ministry to assign the overall responsibility over budgeting matters concerning the social development committees to the Director of Social Development in order to enhance the Director's oversight role.

3) CLAUSE 4- COUNTY COORDINATOR OF SOCIAL DEVELOPMENT

Committee Observation

The Committee observed that the CoG proposed to replace the County Coordinator of Social Development with the County Directors responsible for social development.

Committee Recommendation

The Committee rejected the proposed amendment by the CoG as it would negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill. The current registration of such groups is done administratively by the Ministry Labour and Social protection because there isn't a legislative framework for the same and the Bill seeks to address this. Accordingly in order to decentralize the services, the Bill proposes that the functions that are assigned to the Director of Social Development may be performed by County Coordinators of Social Development.

4) CLAUSE 5- SOCIAL DEVELOPMENT COMMITTEES

Committee Observations

The Committee observed –

- (i) That the CoG proposed deletion of the entire clause because the administrative structures provided in the County Governments Act can undertake the function.
- (ii) That the Ministry of Labour proposed to amend clause 5(1)(a), to insert the words “from the National government” after the words “sub-county social development officer” in order to specify/ clarify on the sub-county social development officers referred in the Bill.
- (iii) That the Ministry of Labour proposed to amend clause 5(1)(b), to have two representatives from the county government in the Social Development Committee instead of one.
- (iv) That the Ministry of Labour proposed to amend clause 5(1)(e), to have four representatives of registered community groups operating in the sub-county in the Social Development Committee instead of five.
- (v) That the Ministry of Labour proposed to amend clause 5(2) to ensure that the appointing or nominating authority shall take into consideration gender equity and ethnicity in the composition of the Social Development Committee as required under the Constitution.

Committee Recommendation

The Committee agreed to the proposed amendments by the Ministry as they will enhance the Bill by ensuring fair representation in the Social Development Committee.

The Committee rejected the proposed amendments by the CoG as they would negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill. The current registration of such groups is done administratively by the Ministry Labour and Social protection because there isn't a legislative framework for the same and the Bill seeks to address this

5) CLAUSE 6- FUNCTIONS OF THE SOCIAL DEVELOPMENT COMMITTEE

Committee Observations

The Committee observed that CoG proposed that the functions proposed to be carried out by the Social Development Committees be assigned to the office of the sub-County Administrator at the sub- county level and the office of the Ward Administrator at the Ward level because these are the administrative structures provided for in sections 50 and 51 of the County Governments Act.

Committee Recommendation

The Committee rejected the proposed amendments by the CoG as they would negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill. The current registration of such groups is done administratively by the Ministry Labour and Social protection because there isn't a legislative framework for the same and the Bill seeks to address this. Accordingly in order to decentralize the services assigned to the Director of Social Development and the County Coordinators of social development, the Social Development Committee can continue to perform the said functions at the sub county level.

6) CLAUSE 7- BUSINESS AND AFFAIRS OF SOCIAL DEVELOPMENT COMMITTEES

Committee Observation

The Committee observed that CoG proposed a deletion of the entire clause because it proposes that these duties be undertaken by the sub office of the sub-County Administrator and ward administrator whose business and affairs of are as set out in County Government Act. Further, regulations may be developed to guide the matter.

Committee Recommendation

The Committee rejected the proposed amendments by the CoG for the reasons provided earlier as they would negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill.

7) CLAUSE 8- REMUNERATION OF MEMBERS OF SOCIAL DEVELOPMENT COMMITTEES

Committee Observation

The Committee observed that the CoG proposed a deletion of the entire clause because it proposes that these duties be undertaken by the sub-County Administrator and ward administrator whose remuneration is currently provided for hence rendering the clause redundant.

Committee Recommendation

The Committee rejected the proposed amendments by the CoG for the reasons provided earlier, that is, the amendments negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill.

8) CLAUSE 10- COMMUNITY GROUPS CONSTITUTIONS

Committee Observations

The Committee observed that the Ministry of Labour proposed various amendments to correct grammatical errors and align inconsistent use of terminology.

Committee Recommendation

The Committee agreed to the proposed amendments to improve the Bill's quality by correcting grammatical errors and aligning inconsistently used terminology.

9) CLAUSE 12- REJECTION OF APPLICATION

Committee Observations

The Committee observed that –

- (i) CoG proposed replacing the word Director with CECM as per the earlier reasons that the functions proposed to be done by the Director be assigned to the CECM. It also proposed that the word immoral be inserted after the word unlawful in paragraph (c) because the law should not aid registration of a community group whose object is to promote immorality.
- (ii) The NGO Board proposed that where a proposed name to be used by a Community Group is similar to that of an existing NGO or PBO that registered locally or internationally it should be rejected. It recommended a standard name search mechanism be established.

Committee Recommendation

- i) The Committee agreed to the proposal to include the word “immorality” in 12(c) but rejected the replacement of Director with CECM as per reason provided earlier.
- ii) The Committee further agreed to the proposal made by the NGO Board to protect existing NGOs and PBOs and avert confusion that may arise where different organisations registered under the various legal regimes bear the same name.

10) CLAUSE 13- PERIOD WITHIN WHICH APPLICATION IS TO BE DETERMINED

Committee Observations

The Committee observed that the Ministry had proposed a new subclause after subclause (2) to provide for appeal mechanism as follows-

3. Where a community group registration has been rejected, the group members can appeal the decision by the Director with the relevant legal authority.

Committee Recommendation

The Committee agreed to the proposed amendment as it provides an appeal structure. The committee proposed the amendment be improved to specify the relevant authority as the same is known.

11) CLAUSE 14- RENEWAL OF REGISTRATION

Committee Observation

The Committee observed that the Ministry had proposed amendment of clause 14(1) by deleting the words “for the renewal of its registration and, thereafter, apply for renewal of its registration at the expiry of a period of one year” and substituting “*the affirmation of its existence*”.

Committee Recommendation

The Committee rejected the proposed amendment as it was unclear and confusing.

12) CLAUSE 16- VOLUNTARY DISSOLUTION

Committee Observation

The Committee observed that the Ministry proposed amendment of clause 16(6) by inserting the words *as per the community group constitution* after the word “settled” to state what happens to the assets of the groups upon voluntary dissolution

Committee Recommendation

The Committee agreed to the proposed amendment as it clarifies what happens to the assets of groups after voluntary dissolution

13) CLAUSE 17- MERGER OF COMMUNITY GROUPS

Committee Observation

The Committee observed that the Ministry had proposed a new subclause to enable change of name upon merger to read

(6) A community group wishing to change name or constitution, shall issue a notice of change or constitution of the new community group and submit it to the Director in accordance with Subsection (4) upon its merger

Committee Recommendation

The Committee agreed to the proposed amendment.

14) CLAUSE 26- DISPUTE RESOLUTION

Committee Observations

The Committee observed that the CoG proposed deletion of 26(2)(3)(4) and replacement with –

(2) If a dispute occurs between one community group and another community group, parties

shall refer the dispute to the County Executive Committee Member.

The CoG further proposed replacing the word “Director” with “CECM”. In its view, the proposed dispute resolution mechanism is too layered and goes against the principles of expediency and efficiency in administrative action as outlined in Article 47 of the Constitution. It is proposed that any dispute be referred to the County Executive Committee member and appeal preferred to the High Court

Committee Recommendation

The Committee rejected the proposed amendments by the CoG for the reasons provided earlier, that is the amendments negate the purpose and object of the Bill by assigning functions to different organs from those intended in the Bill.

15) CLAUSE 32- TREASURER RESPONSIBLE ACCOUNTS

Committee Observation

The Committee observed that the Ministry proposed insertion of the words “as guided the community group constitution and in consideration with other laws of the land” after the word “treasurer's control” to highlight the conditions for vacation of office by the treasurer

Committee Recommendation

The Committee agreed to the proposed amendment.

16) CLAUSE 40- REGULATIONS

Committee Observations

The Committee observed that

- (i) The CoG proposed that the Regulations be made in consultation with the Chairperson of the Council of Governors in the spirit of coordination and consultation between the National Government and County Governments and considering that the principal function rests with the county governments.
- (ii) The Ministry proposed additional crucial matters that require to be provided for in the Regulations, i.e., guidelines on group registration and management, procedures and requirements for reinstatement of groups registration and guidelines on the registration of special interest groups

Committee Recommendation

The Committee agreed to the proposal by the Ministry which improves the Bill. As regards the proposal by the COG the committee rejected the same given that the other proposals to assign functions to county governments had been rejected

17) SECOND SCHEDULE

Committee Observation

The Committee observed that the Ministry proposed insertion of a new paragraph on group assets as follows-

12A. Group Assets

The procedures for handling the distribution, disposal and sharing of assets and upon voluntary dissolution

Committee Recommendation

The Committee agreed to the proposed amendment as it guides that a group's constitution should provide for what happens to the assets of the group after voluntary dissolution.

GENERAL OBSERVATIONS

The Committee observed that the CoG proposed insertion of a new clause on transfer of records maintained by the national government to the county governments within six months of commencement of the Act.

Committee Recommendation

The Committee rejected the proposal since the functions shall be undertaken by the National Government.

**MIN.NO. DC/LSW/2021/341 ADOPTION OF THE REPORT ON THE
COMMUNITY GROUPS REGISTRATION BILL, 2021**

The Committee, having considered the Community Groups Registration Bill, 2021 (National Assembly Bill No. 20 of 2021) adopted the Report on the Consideration of the Bill with the recommendation that the Bill be **agreed to; subject to the amendments contained in the Schedule**. This was proposed by the Hon. Gideon Koske Kimutai, M.P. and Seconded by the Hon. Safia Sheikh Adan, M.P.

MIN.NO. DC/LSW/2021/342 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.30 p.m. The date of the next meeting to be communicate by way of notice.

SIGNED:

THE HON. JOSPHAT KABINGA WACHIRA, M.P.
(CHAIRPERSON)

DATE:
12th October, 2021

MINUTES OF THE 56TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY, 31ST AUGUST, 2021 AT 3.40P.M. IN MEDUSA II CONFERENCE ROOM, ENGLISHPOINT MARINA HOTEL, MOMBASA

PRESENT

1. **The Hon. Josphat Kabinga Wachira, M.P.** – Chairperson
2. **The Hon. Gideon Koske Kimutai, M.P.** – Vice Chairperson
3. The Hon. Ronald Kiprotich Tonui, M.P.
4. The Hon. Abdi Mude Ibrahim, M.P.
5. The Hon. Caleb Amisi, M.P.
6. The Hon. Charles Kanyi Njagua, M.P.
7. The Hon. Fabian Kyule Muli, M.P.
8. The Hon. Gideon Keter, M.P.
9. The Hon. Omboko Milemba, M.P.
10. The Hon. Safia Sheikh Adan, M.P.
11. The Hon. Tom Mboya Odege, M.P.
12. The Hon. Wilson Sossion, M.P.

APOLOGY

1. The Hon. Janet Marania Teyiaa, M.P
2. The Hon. James Onyango K'Oyoo, M.P
3. The Hon. Moses Malulu Injendi, M.P.
4. The Hon. Rose Museo Mumo, M.P.
5. The Hon. David Ole Sankok, M.P
6. The Hon. Nelson Koech, M.P.
7. The Hon. Titus Mukhwana Khamala, M.P.

IN ATTENDANCE

Committee Secretariat

- | | | |
|------------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Ms. Susan Maritim | - | Senior Clerk Assistant |
| 3. Mr. John Mugoma | - | Clerk Assistant II |
| 4. Ms. Doreen Karani | - | Legal Counsel I |
| 5. Mr. Adan Ahmed Abdi | - | Fiscal Analyst |
| 6. Mr. Chelang'a Maiyo | - | Research Officer II |
| 7. Ms. Winnie Kiziah | - | Media Relations Officer |
| 8. Mr. Mohamed Said | - | Assistant Sergeant-At-Arms |
| 9. Mr. Nickson Kibet | - | Audio Officer |

Ministry of Labour and Social Protection

- | | | |
|---------------------------|---|---|
| 1. Mr. Simon Chelugui | - | Cabinet Secretary |
| 2. Eng. Peter Tum | - | Principal Secretary, Labour |
| 3. Hon. Patrick Ole Ntutu | - | Chief Administrative Secretary |
| 4. Ms. Josephine Muruki | - | Director, Social Development |
| 5. Ms. Charity Kiilu | - | Assistant Director for Social Development |
| 6. Ms. Winnie Mwasiaji | - | Deputy Director for Social Development |
| 7. Ms. Joyce Mwale | - | Parliamentary Liaison Officer |

Ministry of Interior & Coordination of National Government

1. Amb. T.H Dado - Chief Administrative Secretary
2. Ms. Priscah Wambui - Principal State Counsel

NGOs Co-ordination Board

1. Mr. Mutuma Nkanata - Chief Executive Officer
2. Ms. Juliet Karari - Legal Officer

Council of Governors

- Ms. Irine .M. Ogamba - Director, Legal Counsel

MIN.NO. DC/LSW/2021/286 PRAYER & PRELIMINARIES

The meeting commenced at 3.40 p.m. with the Prayer followed by preliminary remarks by the Chairperson.

The Chairperson thanked the NGOs Co-ordination Board and Council of Governors for attending the meeting though they had made their submissions the previous day.

MIN.NO. DC/LSW/2021/287

JOINT SUBMISSIONS BY MINISTRY OF LABOUR AND SOCIAL PROTECTION AND MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT ON COMMUNITY GROUPS REGISTRATION BILL, 2021

Amb. T.H. Dado, the Chief Administrative Secretary, Ministry of & Coordination of National Government submitted that the presentation by the Cabinet Secretary was a consolidated position on the Bill by the two ministries.

He added that the Bill provides the necessary framework for registration of community groups in the local level and mechanism for mobilization of society for economic development. He further, noted that the Bill is important as it helps boost security measures in the country through vetting and screening of community groups seeking registration.

The Cabinet Secretary for Labour and Social Protection, Mr. Simon Chelugui made the following submissions :-

Background Information on the Bill

The Cabinet Secretary informed the Committee that the registration of self-help groups is one of the mandates of the Ministry of Labour and Social Protection as outlined in the Executive Order No. 1 of 2018. The mandate is executed by the State Department for Social Protection through the Directorate of Social Development.

The community groups include; self-help groups, older-persons group, youth groups, women groups, men groups, mixed groups, community-based organizations, refugee groups, Persons with Disabilities groups and other special interest groups.

Registration of these groups is carried out both at the Sub- County Social Development Offices and the Huduma Centers across the country. Upon registration, the groups are provided with a Certificate which guarantees them the right of recognition and assembly.

Majority of the groups engage in socio-economic activities geared towards improvement of their livelihoods and self-reliance.

Status of Community Groups Registration

Mobilization and registration of community groups has been going on in Kenya since independence. In the past first five years, The State Department for Social Protection has cumulatively registered 271,400 community groups with an average annual registration of fifty-four thousand (54,000) groups and an estimate Appropriation in Aid (AIA) of Kenya shillings seventy-one million (KES. 71,000,000) annually.

In the last five years the State Department has enhanced the capacity of 258,573 groups through trainings and linkages of 266,753 community groups to Micro Finance Institution (MFIs) and other centralized and decentralized funds such as Uwezo Fund, Women Enterprise Fund (WEF), Youth Enterprise Development Fund (YEDF), National Fund for Persons with Disabilities, National Government Affirmative Action Fund, among others for financial and technical support in the last five years.

Rationale for the Bill

Absence of a legal framework has hampered the growth and development of these community groups. Apart from the Executive Order No. 1 of 2018 that specifically spells out on registration of self-help groups as a mandate of the State Department for Social Protection, Kenya has not had an explicit legal framework to guide in the registration and management of these groups. Mobilization and management of the groups has relied heavily on various guidelines and procedures developed by the Ministry responsible for Social Development.

Over the years, the Ministry has experienced numerous challenges while trying to effectively respond to the needs of these groups, and more so where conflict, leadership wrangles, misappropriation of group resources and assets have occurred.

Unregulated registration and management of community groups has led to weak complaints and grievance redress mechanisms. This has also in some instances led to exclusion, marginalization and exploitation of the vulnerable members in the society.

The Ministry initiated the process of developing the Community Group Registration Bill, to provide a framework for registration and management of community groups.

The enactment of the Bill will allow for streamlined registration and management of community groups. This Bill will help create an enabling environment that will provide for recognition of these groups as legal entities, hence fostering sustainable socio-economic development.

Process of Developing the Bill

The development of the Bill was initiated by the Ministry through the Directorate of Social Development in FY 2016/2017. The process entailed consultation with various stakeholders and relevant Government Ministry and Agencies; including Kenya Law Reform Commission, State Law Office, Council of Governors, Academic Institutions, Civil Society Organizations, Faith Based Organizations and Community members among others. The Kenya Law Reform Commission (KLRC) and State Law Office provided technical support and guidance in the drafting of the Bill.

The Bill was subjected to other public participation processes through various forums which include;

- a) Published in MyGOV.com Newspaper of February 20, 2018 calling for views from the public.
- b) Uploaded in the State Department's website-www.socialprotection.go.ke for access by the public.
- c) Stakeholder forums such as;
 - i. Several stakeholders' meetings held to develop the legislative scheme that facilitated the development of the draft Bill.
 - ii. Validation meeting for Stakeholders was held on March 14, 2018 in Nairobi.
 - iii. The Bill was shared with members of the Parliamentary Committee on Labour & Social Welfare on March 29, 2019.
 - iv. Another stakeholder's meeting was held on 9th April, 2019 in Nairobi to build consensus on the critical issues raised by the members of the Parliamentary Committee on Labour and Social Welfare.

Benefits of the Bill

- a) It provides a regulatory framework for registration, management and regulation of community groups in the country;
- b) The Bill creates an enabling operational environment that promotes community empowerment, self-reliance and sustainable development of community groups and projects;
- c) It also provides for protection of the rights of community groups;
- d) Enhance governance within groups by providing for accountability mechanisms (group leadership, constitution, reporting mechanism among others);
- e) Facilitate collaborations and linkages between community groups, National and County governments, financial institutions and other stakeholders;
- f) Enhance social cohesion and tolerance within community group members;
- g) Support resource mobilization for groups through acquisition of group certificate;
- h) Allow for group savings and loans uptake from financial institutions;
- i) Provides group members with a sense of Identity, belonging, ownership and freedom of association;
- j) Provides for a platform for grievance redress and conflict resolution;
- k) Provides for establishment of a Database for all registered community groups in the country; and
- l) Provide for part of the resources raised through group registration to be ploughed back to the Counties for group development.

Financial Implications

The implementation of the Community Group Registration Bill will require resources from both Government and Development Partners. The Implementation of the Bill by the State Department for Social Protection will be through the Medium-Term Expenditure Framework (MTEF) budgeting process. One of the key instruments of the MTEF budgeting process is the Sector Working Groups and as such the Ministry shall participate through the Social Protection, Culture and Recreation Sector, to cost and prioritize resources for implementation of the Community Group Registration Bill once enacted.

RESPONSE TO THE SUBMISSION BY COUNCIL OF GOVERNORS**1. Unbundling of the Fourth Schedule Part 2(14)**

The following provision does not explicitly speak to community group registration, the emphasis is on community participation in governance at the local level.

“Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level”.

2. Mandate

On the mandate of the Bill, the Ministry responded as follows:-

- i) That one of the mandates of the Ministry as per the Executive Order No 1 of 2018 include, policies on social development, community development, self-help group registration among others
- ii) These policies mandate the Ministry to mobilize and organize communities for sustainable socio -economic development and improved livelihoods. Group mobilization and registration is a function the Ministry has been undertaking since independence through the harambee movements (pooling together) as provided for in the sessional paper No 10, 1965.
- iii) One of the critical functions under this mandate is to prepare communities for socio -economic interventions for other development agencies at both national and county level.
- iv) That, to ensure standardization for uniformity and quality assurance the national government must provide the overall framework for implementation of this functions.
- v) Security is a national government function and implementation is decentralized up to the ward level and is undertaken by the Ministry of Interior and Coordination of the National government.
- vi) Regarding the vetting of the membership and intent of the group during the group registration process, the Ministry noted that it is a requirement that the area Chief counter signs the Group Registration application form. This ensures that no groups with ill intentions are registered.
- vii) That to support background check, scrutiny and further verification of the group information during registration, the ministry submitted that it developed a Community Development Management Information System (CDMIS) that will be linked to the Integrated Population Registration System (IPRS) and other relevant MISs for verification of the group members and their activities.

- viii) That it is important to note that management and operation of group registration is relevant to national security and therefore the function of group registration remains with the national government and specifically the Ministry responsible for Social Development.

3. Institutional Arrangements

The Bill provides for establishment of social development committees at the sub-county level. The Committee can provide a platform for the two level of government to partner. Article 5 1(b) provides for inclusion for an officer responsible for social development at the county level.

RESPONSE ON THE SUBMISSION BY STATE LAW OFFICE

The process of developing the Bill involved several stakeholders including the State Law Office and Council of Governors and that the submissions were acceptable by all the members.

RESPONSE TO THE MEMORANDUM BY NGO'S CO-ORDINATION BOARD

- i) The Ministry accepted the recommendation by the NGO's Co-ordination Board under Part 1 on Preliminary.
- ii) Under Clause 12, the ministry accepted the proposal and amended to read;
“(f) the proposed name of the community group is identical to or resembles the name of a registered community group or National or International Non-Governmental Organization or Public Benefit Organization as to be likely to mislead the public as to its nature or identity.”
- iii) The ministry is developing a web-based Community Development Management Information System (CDMIS) that will have possible link to other IPRS and other relevant databases to support in the verification and vetting of groups and group members.
- iv) On operational definition, the Ministry noted that Civil Society Organizations are small, informal, with limited means and ability to effectively advocate beyond their immediate local communities.
- v) The CSOs referred to in the Bill are organizations that are providing technical and advocacy support to the communities but not funding.
- vi) The Director is an office established through the PSC with decentralized functions at the county and sub-county level to perform the function on behalf of the Director.
- vii) The Ministry noted that a prescribed form of registration has been developed and in use and will be submitted as part of the Regulations as provided for in Clause 40.
- viii) Guidelines on special interest groups with special emphasis on the vulnerability of the group will be developed and submitted as part of the Regulations.
- ix) The Ministry will propose an amendment for a new 13(3) to provide opportunity for appeal.
- x) The issue of disposal of assets is guided by the community groups' constitution.

MIN.NO. DC/LSW/2021/289

ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the meeting was adjourned 6.10p.m. until Wednesday, 1st September, 2021 at 9.30am, same venue.

SIGNED: 

THE HON. JOSPHAT KABINGA WACHIRA , M.P
(CHAIRPERSON)

DATE: 23/9/2021

MINUTES OF THE 53RD SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON MONDAY, 30TH AUGUST, 2021 AT 10.10 A.M. IN MARGHERITA CONFERENCE ROOM, ENGLISHPOINT HOTEL, MOMBASA

PRESENT

1. **The Hon. Josphat Kabinga Wachira, M.P.** – Chairperson
2. **The Hon. Gideon Koske Kimutai, M.P.** – Vice Chairperson
3. The Hon. Ronald Kiprotich Tonui, M.P.
4. The Hon. Abdi Mude Ibrahim, M.P.
5. The Hon. Caleb Amisi, M.P.
6. The Hon. Charles Kanyi Njagua, M.P.
7. The Hon. Fabian Kyule Muli, M.P.
8. The Hon. Gideon Keter, M.P.
9. The Hon. Omboko Milemba, M.P.
10. The Hon. Safia Sheikh Adan, M.P.
11. The Hon. Tom Mboya Odege, M.P.
12. The Hon. Wilson Sossion, M.P.

APOLOGY

1. The Hon. James Onyango K'Oyoo, M.P
2. The Hon. Janet Marania Teyiaa, M.P.
3. The Hon. Moses Malulu Injendi, M.P.
4. The Hon. Rose Museo Mumo, M.P.
5. The Hon. David Ole Sankok, M.P.
6. The Hon. Titus Mukhwana Khamala, M.P.
7. The Hon. Nelson Koech, M.P.

IN-ATTENDANCE

Committee Secretariat

1. Mr. George Gazemba - Principal Clerk Assistant II
2. Ms. Susan Maritim - Senior Clerk Assistant
3. Mr. John Mugoma - Clerk Assistant II
4. Ms. Doreen Karani - Legal Counsel I
5. Mr. Adan Ahmed Abdi - Fiscal Analyst
6. Mr. Chelang'a Maiyo - Research Officer II
7. Ms. Winnie Kiziah - Media Relations Officer
8. Mr. Mohamed Said - Assistant Sergeant-At-Arms
9. Mr. Nickson Kibet - Audio Officer

STAKEHOLDERS

1. Ms. Irine .M. Ogamba - Director of Legal Services, Council of Governors
2. Mr. Samson Maundu - Principal Parliamentary Counsel, Attorney General's Office

Ministry of Labour and Social Protection

1. Ms. Tepla Sitati - Social Development Officer
2. Ms. Josephine Muriuki - Director, Social Development

3. Ms. Winnie Mwasiaji - Deputy Director for Social Development
4. Ms. Charity Kiilu - Assistant Director for Social Development

NGOs Co-ordination Board

1. Mr. Mutuma Nkanata - Chief Executive Officer
2. Ms. Juliet Karari - Legal Officer

MIN.NO. DC/LSW/2021/271 PRAYERS AND PRELIMINARIES

The meeting commenced at 10.10 a.m. with the Prayer followed by welcoming remarks by the Chairperson.

In his opening remarks, the Chairperson welcomed the stakeholders to the meeting and stated the importance of the Community Groups Registration Bill, 2021. He added that the Committee takes matters of public participation seriously.

MIN.NO. DC/LSW/2021/272 ADOPTION OF THE RETREAT PROGRAMME

The Programme was adopted without amendments, having been proposed and seconded by the Hon. Tom Odege, M.P. and the Hon. The Hon. Safia Sheikh Adan, M.P., respectively.

MIN.NO. DC/LSW/2021/273 PRESENTATION OF THE LEGAL BRIEF ON THE COMMUNITY GROUPS REGISTRATION BILL, 2021

The Legal Counsel briefed the meeting on the contents of the Bill as follows :-

That, the principal objective of the Bill is to provide a regulatory framework for the registration and regulation of community groups, that is, a voluntary association of individuals from the same community which is self-organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit and includes a special interest group, community project and community-based organisation.

Overview of the proposed provisions

Part I of the Bill (clauses 1 and 2) provides for preliminary matters including the short title of the Bill and the definitions of key terms used in the Bill.

Part II of the Bill (clauses 3 to 8) provides for the Office of the Director of Social Development, which is intended to be an office in the public service. The clause provides for the appointment and functions of the Director. It also provides for social development committees, their appointment, membership, functions and powers, conduct of business, and the remuneration of their members.

Part III of the Bill (clauses 9 to 20) provides for the registration of community groups, including the registration of special community groups, and the amalgamation and merger of community groups. It provides for the requirements for registration and the circumstances under which a community group may be dissolved or have its certificate of registration suspended or cancelled.

Part IV of the Bill (clauses 21 to 30) provides for the regulation of community groups including the general objects of community groups; the appointment and role of office bearers; dispute resolution; registers of members of community groups; and obligation to maintain the confidentiality of members' details.

Part V of the Bill (clauses 31 to 37) provides for financial matters relating to community groups including the maintenance of financial records; the responsibilities of treasurers' over community

groups' accounts; the power of the Director to request information and documents from community groups; the audit of community groups' financial records; and resource-mobilization activities by community groups.

Part VI of the Bill (clauses 38 to 41) provides for general matters. Clause 38 makes it an offence to obstruct the Director in the course of performing his duties while clause 39 provides for a general penalty. Clause 40 provides for the making of regulations and clause 41 provides for transitional matters relating to community groups that had been registered by the national Government on the coming into force of the Bill.

The **First Schedule** provides for the conduct of business and affairs of county and sub-county community development committees.

The **Second Schedule** provides for matters to be provided for in the constitution of a community group.

MIN.NO. DC/LSW/2021/274

SUBMISSIONS BY THE NON-GOVERNMENTAL ORGANISATIONS CO-ORDINATION BOARD ON THE COMMUNITY GROUPS REGISTRATION BILL, 2021

Mr. Mutuma Nkanata, the CEO of NGO Co-ordination Board submitted that:-

1. The definition of a Community and Community Group in the Bill is different from the definition of a Non-Governmental Organization as provided for under the NGOs Co-ordination Act of 1990.
2. From the definition, it was clear that community groups are not limited to charitable or public benefit objectives as may be with the NGOs Act or PBOs Act. Some of the community groups that may qualify for registration under this law include social groups such as resident associations, book clubs and other shared interest groups. Previously, for such groups to be registered, they would either be societies or public benefit organisations.
3. The definition of the Community Groups should be clear to reduce ambiguities during implementation. It should cover the purpose, common goal and the local dimension as envisaged in the registration requirements and should not overlap the provisions of the NGO Act, 1990 and the PBO Act, 2012. That the definition of "*community group*" under **Clause 2** should be amended to read as follows;

"community group" means a voluntary association of individuals from the same community which is self-organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit and includes a special interest group, community project and community-based organisation but shall not include a Public Benefit Organization, NGO or groups formed to champion a political cause or contrary to public policy.

4. The definition of 'special interest group' is however vague as it defines it as 'a group comprised of individuals who share a common interest that due to the unique nature of that interest, condition or need has failed to raise a large membership within the group.' This leaves a lot of room for discretion to the Director which may be used for discrimination.

5. Clause 12 may lead to a possible conflict of interest between NGOs or PBOs and community groups. Some community groups may ride on the name of some NGOs/PBOs to get funding from the unknowing public philanthropists. Clause 12 should therefore be amendment by inserting the following clause after clause 12 (1) (e) to read as follows:

(f) the proposed name of the community group is identical to or resembles the name of a registered community group or National or International Non-Governmental Organization or Public Benefit Organization as to be likely to mislead the public as to its nature or identity.
6. A standard name search mechanism should be established to avoid double registration of organizations under more than one legal regime and duplicity of registration. A standard name search database which will be used to reserve names for NGOs or PBOs, CBOs, Community Groups, Societies and other charitable organizations.
7. There is need for a clear definition of the use of the words **Civil Society Organizations (CSOs)** as referred to in Clause 4 (3) (b) and Clause 5 (1) (d) since the term Civil Society Organization is used very loosely sometimes to refer to NGOs and this was a likely point of conflict between NGOs and Community Groups
8. The Bill creates an office of the Director of Social Development but it is silent on the qualifications that one is required to have to be appointed as a director.
9. The Bill fails to provide prescribed forms of registration which should be submitted together with the Constitution and should be provided for in the Schedules of the Bill.
10. Clause 12 of the Bill provides that the Director may reject an application for registration but fails to provide an opportunity for Appeal. It is also silent on whether community groups can apply for Reinstatement upon cancellation of registration.
11. Clause 16(6) refers to the distribution of assets upon voluntary dissolution. Community Groups are registered as self-help groups strictly for the benefit of the membership as opposed to NGOs which are registered as charitable organizations and whose assets are of a public nature and therefore the same is redistributed to other organizations of similar objectives. The distribution of assets in this case therefore is not clear as to whom the assets shall be distributed to.
12. Clause 16(7) also fails to state what happens to the assets of the organizations upon voluntary dissolution.
13. The Bill provides that the community groups are required to maintain financial records. Which is good for accountability and transparency. The NGOs Act and PBO Act encourages PBOs to form umbrella associations which can develop and publish codes of conduct applicable to members, governing body officials, staff and volunteers of PBOs. This form of self-regulation can be used by community groups to promote accountability and transparency amongst themselves.

MIN.NO. DC/LSW/2021/275

**SUBMISSIONS BY THE COUNCIL OF GOVERNORS
ON COMMUNITY GROUPS REGISTRATION BILL,
2021**

Ms. Irine .M. Ogamba, Director Legal Services, Council of Governors submitted as follows:-

General Comments

1. That the Bill seeks to provide a regulatory framework for the registration and regulation of community groups and for connected purposes.
2. That the Bill establishes the following institutional arrangement -
 - i. The Office of the Director of Social Development, an office in the public service (National Government). The Director is the principal duty bearer.
 - ii. County Coordinator Of Social Development; and
 - iii. Social Development Committee at the sub – county level.
3. The Fourth Schedule of the Constitution provides the distribution of functions between the National Government and the County Governments.
4. Part 2 of the Fourth Schedule, specifically the fourteenth (14th) function, is exclusively assigned to County Governments and it stipulates as follows: "*Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.*"
5. That the unbundling and transfer of functions is a constitutional interpretation and application exercise that ought to be objectively undertaken based on the constitutional provisions and informed by key fundamental objects and principles.

Objects and Principles

That the objects of the devolution are as set out in Article 174 and relevant to the subject matter—

(c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;

(d) to recognise the right of communities to manage their own affairs and to further their development;

(e) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;

(h) to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya;

The Principles are:-

- i. That governments at the national and county levels are distinct as provided in Article 6 (2).
- ii. The exclusive/concurrent dichotomy of functions - The assignment of functions and powers under Article 186(2) of the constitution recognizes that while some functions are assigned as exclusive functions of each level of government, others are concurrent functions of both levels of government.
- iii. Cooperation between national and county governments: The principle requires that Government at either level -

- a) to perform its functions, and exercise its powers, in a manner that *respects the functional and institutional integrity* of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;
- b) assist, support and consult and, as appropriate, implement the legislation of the other level of government; and
- c) liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.

Unbundling of the Fourth Schedule Part 2(14)

That the Transition Authority unbundled the 14th County function as follows:

- i. Developing systems, standards and operational procedures for community participation;
- ii. Facilitating formation/ restructuring of community level structures for community engagement and participation in development Initiatives;
- iii. Facilitating formation, registration and certification of community groups;
- iv. Undertake Community groups capacity building and sensitization;
- v. Providing Grant support to community groups to support up-scaling/ replication of best practices; and
- vi. Facilitation to Community Capacity support centers.

The representative of the CoG also provided an analysis of the unbundled functions and corresponding functions in the Bill

Comments on specific provisions

The CoG further gave the following recommendations -

1. The Long Title be amended to read: “AN ACT of Parliament to provide a regulatory framework for the registration and regulation of community groups and to give effect to the fourth schedule part ii (14) of the Constitution and for connected purposes.”
2. Part 1 (Preliminary) be amended as follows –
 - “Cabinet Secretary” and "Director" be amended to read: “CECM” which means the County Executive Committee member responsible for social development in the county.
 - "Social development officer" be amended to read: "Social development officer" means an officer in an office established by the County Public Service Board as such.
3. Part II (Administration) be amended as follows –
 - i) Clause 3 (1) be amended to read: The County Governor shall designate a County Executive Committee Member to be responsible for Social Development

- ii) Clause 3 (2) (h) be amended to read: Performing such other functions as may be assigned by the Governor, the County Executive Committee, national legislation or county legislation.
 - iii) Clause 4 (1) be amended to read: The county government shall appoint a social development officer for each ward.
 - iv) Clause 4 (2) be amended to read: A social development officer shall be responsible for performance of the CECMs duties in the assigned area
 - v) Clause 4(3)(a) and (b) be deleted.
 - vi) Clause 5 be deleted since the administrative structures are provided by the county executive suffice.
 - vii) The functions set out in Clause 6 should be functions undertaken by the structures at the Ward level.
 - viii) Clause 8 should be deleted since the provision is redundant as it applies in ALL instances in the public service
4. Part III (Registration of Community Groups) be amended as follows –
- i) Clause 9 (1) (3), 10 (4) be amend by replacing: “Director” with “CECM”
 - ii) Clause 9 (4) be amended by replacing: “Director” with “County Government”
 - iii) Clause 11 (1) be amend by replacing: the first “Director” with “CECM” and second “Director” with “County Government”
 - iv) Clauses 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26 (5, 6, 7, 8), 27 (1) 28 (3), 33, 34, 35, 36, 38, 40 be amend by replacing: “Director” with “CECM”
5. Part IV (Regulation of Community Groups) be amended as follows –
- i) Clauses 25 (3), 37 (3), 40 be amended by replacing: “Cabinet Secretary” with “CECM”
 - ii) Clause 26 (2) be amended by replacing: “sub-county social development committee which” with “ward social development officer who”
 - iii) 26 (3) be amended as follows: replace “a sub-county social development committee” with “the ward social development officer” and “the county social development committee” with “the sub county administrator”
 - iv) Clauses 26 (2)(3) (4) on the dispute resolution mechanism should be revisited since it is too layered and goes against the principles of expediency and efficiency in administrative action as outlined in Art 47 of the Constitution.
 - v) It is proposed that any dispute be referred to the County Executive Committee member and appeal preferred to the High Court
6. Transitional provisions are not provided for in the Bill.
7. Need for a new Clause 41(2) which should read, “All records held by the National Government in respect to community groups registered shall be transferred to the relevant Counties within 6 months of commencement of this Act”

Conclusion and Recommendation

The County Governments opposed the Bill in its entirety on the following grounds:-

- a) That the Bill contravenes the Constitution of Kenya and is a flagrant claw back on devolution.
- b) A Bill cannot legislate on county functions and assign national structures to implement the law.
- c) The Bill contravenes the provisions of the Fourth Schedule part 2 on functions of county governments and seeks to have the Bill reviewed and submitted to county Assemblies for consideration and enactment.
- d) The function of mobilization of communities to participate in economic development is a function of county governments and will have to be protected.
- e) The Transition Authority while unbundling county functions provided for the function of social and community mobilization as a preserve of counties.

MIN.NO. DC/LSW/2021/276

SUBMISSIONS BY THE OFFICE OF ATTORNEY GENERAL ON THE COMMUNITY GROUPS REGISTRATION BILL, 2021

Mr. Samson Maundu representing the Office of the Attorney General responded to the following two specific issues that were highlighted by the NGO Co-ordination Board and the Council of Governors –

1. Whether or not there is need for a new legislation for the registration of Community Groups when the legal framework already has the NGO Co-ordination Act, the Public Benefits Organisations Act, and the Societies Act.
2. Whether or not, in light of the provisions of Part 2 of the Fourth Schedule to the Constitution, the legislation should have been made at national level or at county level.
3. That the policy falls within the jurisdiction of the Ministry of Labour and Social protection which has registered social development groups through its social development officers. The current registration of such groups is done administratively because there isn't a legislative framework for the same.
4. The proposed Bill intends to address the gap in the legislative framework. It also complements the NGO Coordination Act, the PBO Act and the Societies Act.
5. Article 191 of the Constitution allows, in certain circumstances, national legislation to supersede county legislation, if certain conditions are satisfied. These conditions include that the national legislation shall apply uniformly throughout Kenya [Art. 191(2)(a)] and the national legislation is necessary for the maintenance of national security [Art. 191(3)(c)]. The Ministry prepared and submitted a Cabinet Memo on the Bill to the Cabinet for approval, which approval was granted, hence the Bill was transmitted to Parliament in the usual manner.

6. That policy has not changed, and there isn't any significant constitutional issues on the Bill. The Office of the Attorney General supports the Bill and is committed to provide guidance to the State Department of Social development in the processing of the Bill as well as the committee in consideration of the Amendments thereof.

Committee Observations

The Committee observed that;

1. Only Council of Governors submitted memoranda during the call for memoranda vide newspaper advertisement.
2. The Bill affects the functions of County Governments as set out in the Fourth Schedule to the Constitution and is therefore a Bill concerning counties.
3. Registration of Community Groups is currently done by Ministry of Labour and Social Protection though it is a function assigned by the Constitution to the County Government.
4. Public Benefits Organizations Act was passed in 2013 but has never been implemented.
5. County Governments do not have the capacity to carry out due diligence on registration of Community Groups.
6. Registration of Community Groups at the County levels is not based on any legislation.
7. There is need for a common legal framework/ harmonized legal regime across the Country to regulate the Community Groups and specifically for security interest.

MIN.NO. DC/LSW/2021/277 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.10p.m. until 2.00pm., same day, same venue.

SIGNED: 

THE HON. JOSPHAT KABINGA WACHIRA , M.P
(CHAIRPERSON)

DATE: 23/2/2021

MINUTES OF THE 44TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON MONDAY, 26TH JULY, 2021 AT 10.00A.M. IN NDOVU CONFERENCE ROOM, BOMA HOTEL

PRESENT

1. **The Hon. Josphat Kabinga Wachira, M.P.** - Chairperson
2. The Hon. Ronald Kiprotich Tonui, M.P.
3. The Hon. Abdi Mude Ibrahim, M.P.
4. The Hon. Caleb Amisi, M.P.
5. The Hon. Charles Kanyi Njagua, M.P.
6. The Hon. David Ole Sankok, M.P.
7. The Hon. Fabian Kyule Muli, M.P.
8. The Hon. Gideon Keter, M.P.
9. The Hon. Nelson Koech, M.P.
10. The Hon. Omboko Milemba, M.P.
11. The Hon. Safia Sheikh Adan, M.P.
12. The Hon. Titus Mukhwana Khamala, M.P.
13. The Hon. Tom Mboya Odege, M.P.
14. The Hon. Wilson Sossion, M.P.

APOLOGY

1. **The Hon. Gideon Koske Kimutai, M.P.** – Vice Chairperson
2. The Hon. Janet Marania Teyiaa, M.P.
3. The Hon. Moses Malulu Injendi, M.P.
4. The Hon. Rose Museo Mumo, M.P.

IN ATTENDANCE

Committee Secretariat

- | | | |
|---------------------------|---|------------------------|
| 1. Ms. Susan Maritim | - | Senior Clerk Assistant |
| 2. Mr. Adan Sora Gindicha | - | Senior Clerk Assistant |
| 3. Mr. John Mugoma | - | Clerk Assistant II |
| 4. Mr. Ronald Walala | - | Legal Counsel |
| 5. Mr. James Muguna | - | Researcher |
| 6. Mr. Nickson Kibet | - | Audio Officer |
| 7. Mr. Said Mohamed | - | Sergeant-At-Arms |

AGENDA

1. Prayers
2. Preliminaries
 - i. Introductions
 - ii. Communication from the Chairperson
 - iii. Confirmation of Minutes of previous Sittings
 - iv. Matters Arising
3. **Consideration of the Care and Protection of Child Parents Bill, 2019 (Sen Bill No. 11 of 2019)**
4. **Consideration of Community Groups Registration Bill, 2021**
5. Any Other Business

6. Adjournment/Date of the next Sitting

MIN.NO. DC/LSW/2021/220 PRELIMINARIES

The meeting commenced at 10.00 a.m. with the Prayer followed by welcoming remarks.

MIN.NO. DC/LSW/2021/221 ADOPTION OF THE AGENDA

The Agenda was adopted having been proposed and seconded by the Hon. Caleb Amisi, M.P. and the Hon. Abdi Mude Ibrahim, M.P. respectively.

MIN.NO. DC/LSW/2021/222 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN.NO. DC/LSW/2021/223 CONSIDERATION OF THE CARE AND PROTECTION OF CHILD PARENTS BILL, 2019 (SEN. BILL NO. 11 OF 2019)

The Committee was presented with the legal brief as follows –

- 1) The Bill seeks to provide a framework for the care and protection of child parents. It provides a framework through which an expectant girl child or a child parent may actualise their right to basic education and at the same time ensure the care of their children.
- 2) It imposes an obligation on the National and County governments to put mechanisms in place and establish programmes that ensure that not only is this right realized in relation to child parents, but also ensure that the cases of child pregnancies and the dropping out of school by child parents is reduced.
- 3) The Bill prohibits schools from expelling students who become pregnant, disallows compulsory pregnancy tests on girls and requires schools to ensure harassment-free environments for child parents among other provisions. In particular, the Bill provides, among other things—
 - (a) Obligations of the National Government with respect to child parents that include through the National Council for Children’s Services established under section 30 of the Children Act to—
 - (i) put in place mechanisms to establish a comprehensive capacity building programme for child parents to ensure they practice responsible family life; and
 - (ii) establish, in consultation with the Cabinet Secretary responsible for matters relating to education, non-discriminatory enrolment, back to school or other training programmes;
 - (b) Obligations of a county government with respect to the care of neglected children which include collaboration with the County Education Board and the county executive committee member responsible for education in—
 - (i) establishing programmes to ensure that expectant children and child parents have access to education services; and

- (ii) formulating and implementing county specific programmes for the integration of expectant children and child parents into society and institutions of basic education within the respective County; and
 - (iii) establishing childcare centres for child parents for child parents who intend to enrol back to school and who do not have access to support services for the care of their child;
- (c) Role of national and county governments in the prevention of school drop out by formulating policies and developing programmes and interventions for the re-admission and integration of children who have dropped out of school by reason of pregnancy;
 - (d) Rights of pregnant and parenting students be readmitted or enrolled into an institution of basic education;
 - (e) Management of teenage pregnancies in school and obligations of parents and guardian.
 - (f) The Bill further provides for registration and licensing, monitoring and inspection of care centres and transition of existing care centres that are currently registered under the Children's Act, 2001 to be considered as registered under the new regime.

Committee Resolution

- 1) The Committee also resolved to undertake further research and consultations on Clause 10(4) and (5) regarding testing of children so that the Committee can make an informed decision on the same. Some Members support mandatory testing of the teenagers to ascertain their pregnancy status so as to take the necessary steps to protect mother and child.
- 2) The Committee resolved to defer further consideration of the Bill to allow for stakeholder consultations with key stakeholders including Ministry of Education, the Children's Department, in the Ministry of Labour & Social Protection, Teachers Unions and NGOs dealing with child rights. The meeting to take place in the next two weeks.
- 3) The Committee secretariat was tasked to ensure that the Senate's Report on Public Participation and Hansard proceedings on the Bill are availed to the Committee during the next meeting to consider the said Bill.

**MIN.NO. DC/LSW/2021/219
REGISTRATION BILL, 2021**

CONSIDERATION OF THE COMMUNITY GROUPS

The Committee was presented with the legal brief on the Bill as follows –

- 1) The Principal Objective of the Bill is to provide a regulatory framework for the registration and regulation of community groups, that is, a voluntary association of individuals from the same community which is self-organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit and includes a special interest group, community project and community-based organisations.

- 2) The Bill is a government sponsored Bill that was read a First Time on 8th June 2021.
- 3) **Part I of the Bill** (clauses 1 and 2) provides for preliminary matters including the short title of the Bill and the definitions of key terms used in the Bill.
- 4) **Part II of the Bill** (clauses 3 to 8) provides for the office of the Director of Social Development, which is intended to be an office in the public service. The clause provides for the appointment and functions of the Director. It also provides for social development committees, their appointment, membership, functions and powers, conduct of business, and the remuneration of their members.
- 5) **Part III of the Bill** (clauses 9 to 20) provides for the registration of community groups, including the registration of special community groups, and the amalgamation and merger of community groups. It provides for the requirements for registration and the circumstances under which a community group may be dissolved or have its certificate of registration suspended or cancelled.
- 6) **Part IV of the Bill** (clauses 21 to 30) provides for the regulation of community groups including the general objects of community groups; the appointment and role of office bearers; dispute resolution; registers of members of community groups; and obligation to maintain the confidentiality of members' details.
- 7) **Part V of the Bill** (clauses 31 to 37) provides for financial matters relating to community groups including the maintenance of financial records; the responsibilities of treasurers' over community groups' accounts; the power of the Director to request information and documents from community groups; the audit of community groups' financial records; and resource-mobilisation activities by community groups.
- 8) **Part VI of the Bill** (clauses 38 to 41) provides for general matters. Clause 38 makes it an offence to obstruct the Director in the course of performing his duties while clause 39 provides for a general penalty. Clause 40 provides for the making of regulations and clause 41 provides for transitional matters relating to community groups that had been registered by the National Government on the coming into force of the Bill.
- 9) **The First Schedule** provides for the conduct of business and affairs of county and sub-county community development committees.
- 10) **Second Schedule** provides for matters to be provided for in the constitution of a community group.
- 11) That the Bill affects the functions of County Governments as set out in the Fourth Schedule of the Constitution and is therefore a Bill concerning Counties.

Committee Observations

The Committee observed that the Council of Governors submitted a Memorandum dated 18th June 2021 rejecting the Bill since in its opinion, the Bill offends the provisions of the Constitution that assign the functions to County Governments.

The Committee sought to understand the legal framework for current registration of community groups.

On the matter of constitutionality of the Bill, the Committee was informed that Article 186 (4) of the Constitution provides that parliament may legislate on any matter.

Way Forward

The Committee resolved to defer further consideration of the matter for 2 weeks to allow for consultations including with the Ministry of Labour and Social Protection, Office of the Attorney General and the Council of Governors together with other relevant stakeholders.

MIN.NO. DC/LSW/2021/224 ANY OTHER BUSINESS

No other business arose.

MIN.NO. DC/LSW/2021/225 ADJOURNMENT

There being no other business, the meeting was adjourned 1.35pm

SIGNED: 

**THE HON. JOSPHAT KABINGA WACHIRA , M.P
(CHAIRPERSON)**

DATE: 03/08/2021

ANNEXURE 4:

NEWSPAPER ADVERTISEMENT FOR PUBLIC
PARTICIPATION



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
 TWELFTH PARLIAMENT- FIFTH SESSION

In the Matter of Article 118(1) (b) of the Constitution
 And
 In the Matter of Consideration by the National Assembly of;

1. The Higher Education Loans Board (Amendment) Bill, 2020 (National Assembly Bill No. 37 of 2020);
2. The Pharmacy and Poisons (Amendment) Bill (National Assembly Bill No. 1 of 2021);
3. The Health (Amendment) Bill (National Assembly Bill No. 14 of 2021);
4. The National Electronic Single Window System Bill, 2021 (National Assembly Bill No. 15 of 2021);
5. The Coffee Bill, 2021 (National Assembly Bill No. 17 of 2021);
6. The Community Groups Registration Bill (National Assembly Bill No. 20 of 2021);
7. The Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021);
8. The Computer Misuse and Cybercrimes (Amendment) Bill (National Assembly Bill No. 11 of 2021)
9. The Kenya Industrial Research and Development Institute Bill (National Assembly Bill No. 44 of 2021);
10. The National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020);
11. The Kenya Deposit Insurance (Amendment) Bill (National Assembly Bill No. 43 of 2020);
12. The Public Procurement and Asset Disposal (Amendment) (No. 3) Bill (National Assembly Bill No. 49 of 2020);
13. The Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021);
14. The Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No. 19 of 2021).

SUBMISSION OF MEMORANDA

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the aforementioned Bills, whose objects are as follows:

The Higher Education Loans Board (Amendment) Bill, 2020 (National Assembly Bill No. 37 of 2020) sponsored by Hon. Paul Mwirigi, MP, Igembe South Constituency, seeks to amend the Higher Education Loans Board Act in order to provide that a loanee shall commence the repayment of his or her loan once he or she secures employment. The amendment is meant to cushion unemployed graduates from being charged interest on the loan before they have secured employment.

The Pharmacy and Poisons (Amendment) Bill, 2021 (National Assembly No 1 of 2021) sponsored by Hon. Alfred Keter, MP, Nandi Hills Constituency, seeks to amend the Pharmacy and Poison Act to prohibit the sale or dispensing of medicine without written prescription from a registered medical practitioners

The Health (Amendment) Bill, 2021 (National Assembly No 14 of 2021) sponsored by Hon. Moses Mwambu Wekesa Mabonga, MP, Bumula Constituency, seeks to amend the Health Act No 21 of 2017 to provide that the National government and county governments shall, in consultation through the existing inter-governmental relations mechanism establish regional cancer centers; to make it an offence for a person in-charge of a Public Health facility to demand or permit of payments of advance medical fees as pre-condition for the provision of medical services; to make it an offence for person in-charge of a Public Health facility to detain a body of deceased person as means of enforcing settlement of outstanding medical bills and to provide for regulation on levying of charges for the practice of conventional medical practice.

The National Electronic Single Window System Bill, 2021 (National Assembly Bill No. 15 of 2021) seeks to provide for the establishment and operationalization of the National Electronic Single Window System in order to facilitate trade, the establishment of the Kenya Trade Network Agency, to provide for electronic transactions, and for connected purposes.

The Coffee Bill, 2021 (National Assembly Bill No. 17 of 2021) seeks to provide for development, regulation and promotion of the Coffee Industry, provide for establishment, powers and functions of the Coffee Board of Kenya.

The Community Groups Registration Bill, 2021 (National Assembly Bill No.20 of 2021) seeks to provide a regulatory framework for the registration and regulation of community groups and connected purposes.

The Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021) sponsored by Hon. David Pkosing, MP, Pokot South Constituency, seeks to amend the Kenya Roads Act (No. 2 of 2007) to align the Act with the provisions of the Constitution with regard to the auditing functions of the Office of the Auditor-General. The Act currently refers to the defunct office of the Controller of Budget and the Auditor-General. The Bill further seeks to amend the term of office and the qualification for the Director-General of the Kenya Roads Board appointed under the Act.

Computer Misuse and Cybercrimes (Amendment) Bill, 2021 (National Assembly Bill No. 11 of 2021) sponsored by Hon. Aden Bare Duale, MP, Garissa Township Constituency, seeks to amend The Computer Misuse and Cybercrimes Act, 2018 to provide for the prohibition against the sharing of pornography through the internet and prohibit use of electronic mediums to promote terrorism, extreme religious and cult activities.

Kenya Industrial Research and Development Institute Bill, 2021 (National Assembly Bill No. 44 of 2021) seeks to establish the Kenya Industrial Research and Development Institute, and for connected purposes. It further provides for the promotion of research, development, technology and innovation in industrial and allied technologies, and for initiation and support of industrial development.

The National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020) sponsored by Hon. David Gikaria, MP, Nakuru Town East Constituency, seeks to amend the National Construction Authority Act, No. 41 of 2011 to ensure women, youth and persons living with disabilities with start-up businesses who apply to be registered as contractors under category six, seven and eight are exempted from paying the prescribed fee. The amendment seeks to recognize women, youth and persons living with disabilities as marginalized groups and to cushion them from the burden of paying registration fees.

The Kenya Deposit Insurance (Amendment) Bill, 2020 (National Assembly Bill No. 43 of 2020) sponsored by Hon. Abdul Rahim Dawood, MP, Imenti North Constituency, seeks to amend section 28 of the Kenya Deposit Insurance Act, 2012 in order to increase the maximum amount a person with an account with an institution under liquidation is to be paid by the Kenya Deposit Insurance Corporation. It further seeks to delete the provision limiting the maximum amount a person is to be paid by the Corporation despite having different accounts.

The Public Procurement and Asset Disposal (Amendment) (No. 3) Bill, 2020 (National Assembly Bill No. 49 of 2020) sponsored by Hon. Benjamin Gathiru Mwangi, MP, Embakasi Central Constituency, seeks to amend the Public Procurement and Asset Disposal Act, 2015 to enhance the amount for tenders where Kenya citizens are given

exclusive preference from the sum of five hundred million shillings to twenty billion shillings. This is to protect the Kenyan traders from foreign competitors.

The Irrigation (Amendment) Bill, 2021 (National Assembly Bill No. 12 of 2021) seeks to amend the Act by expanding the administration of irrigation matters to include management and regulation of irrigation matters. The Bill further seeks to amend the Act to harmonize the provision of the Irrigation Act, Water Act and Water Resources Management Rules, 2007.

The Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No. 19 of 2021) seeks to amend the Tax Appeals Tribunal Act, 2013 to address the challenges affecting the performance of the Tax Appeals Tribunal to facilitate the expedition of tax disputes in the country.

Pursuant to Standing Order 127(1) of the National Assembly Standing Orders, the Bills proposing amendments to the various Acts of Parliament are committed to Departmental Committees of the National Assembly as set out in the schedule hereunder:

SCHEDULE

| No. | BILL | COMMITTEE |
|-----|--|---|
| 1. | The Higher Education Loans Board (Amendment) Bill, 2020 (National Assembly Bill No. 37) | Education and Research |
| 2. | The Pharmacy and Poisons (Amendment) Bill (National Assembly No 1 of 2021) | Health |
| 3. | The Health (Amendment) Bill (National Assembly No 14 of 2021) | |
| 4. | The Computer Misuse and Cybercrimes (Amendment) Bill (National Assembly Bill No. 11 of 2021) | Communication, Information and Innovation |
| 5. | The Coffee Bill, 2021 (National Assembly Bill No. 17 of 2021) | Agriculture and Livestock |
| 6. | The Community Groups Registration Bill (National Assembly Bill No.20 of 2021) | Labour and Social Welfare |
| 7. | Kenya Industrial Research and Development Institute Bill (National Assembly Bill No. 44 of 2021); | Trade, Industry and Cooperatives |
| 8. | The Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021) | Transport, Public Works and Housing |
| 9. | The National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020) | |
| 10. | The Kenya Deposit Insurance (Amendment) Bill (National Assembly Bill No. 43 of 2020) | Finance and National Planning |
| 11. | The Public Procurement and Asset Disposal (Amendment) (No. 3) Bill (National Assembly Bill No. 49 of 2020) | |
| 12. | The National Electronic Single Window System Bill, 2021 (National Assembly Bill No. 15 of 2021) | |
| 13. | The Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No. 19 of 2021) | |
| 14. | Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021) | Environment and Natural Resources |

The Bills were read a First Time pursuant to Standing Order 127(3) on 8th and 9th June 2021. Copies of the Bills are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Friday 18th June, 2021, at 5.00 pm.

MICHAEL SIALAL, CBS
 CLERK OF THE NATIONAL ASSEMBLY

11th June 2021

ANNEXURE 5:

SUBMISSION FROM STAKEHOLDERS



REPUBLIC OF KENYA

**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT OF SOCIAL PROTECTION**

**SUBMISSION TO THE DEPARTMENTAL COMMITTEE ON
LABOUR AND SOCIAL WELFARE**

ON

THE COMMUNITY GROUPS REGISTRATION BILL, 2021

**PRESENTED BY
THE CABINET SECRETARY, MINISTRY OF LABOUR AND
SOCIAL PROTECTION**

ON

31st AUGUST, 2021

1.0 Background information on the Bill

Registration of self-help groups is one of the mandates of the Ministry of Labour and Social Protection as outlined in the Executive Order No. 1 of 2018. The mandate is executed by the State Department for Social Protection through the Directorate of Social Development under its core function of community development which includes group promotion through mobilization, registration, participation and capacity building of individuals and communities.

The community groups include; self-help groups, older-persons group, youth groups, women groups, men groups, mixed groups, community-based organizations, refugee groups, Persons with Disabilities groups and other special interest groups.

Registration of these groups is carried out both at the **Sub- County Social Development Offices** and the **53 Huduma Centers** across the country. Upon registration, these groups are provided with a Certificate which guarantees them the right of recognition and assembly. Majority of these groups engage in socio-economic activities geared towards improvement of their livelihoods and self-reliance.

2.0 Status of Community Groups Registration

Mobilization and registration of community groups has been going on in Kenya since independence. In the past first five years, The State Department for Social Protection has cumulatively registered 271,400 community groups with an average annual registration of fifty-four thousand (54,000) groups and an estimate Appropriation in Aid (AIA) of Kenya shillings seventy-one million (KES. 71,000,000) annually.

Summary of the registration is as indicated below;

| Financial Year | No. of Groups Registered at the Sub- County | No. of Groups Registered at Huduma Centers | Total Annual Registration | Total Annual AIA collected |
|------------------------------|---|--|---------------------------|----------------------------|
| 1st July 2016-30th June 2017 | 51,300 | 17,600 | 68,900 | 73,205,495 |
| 1st July 2017-30th June 2018 | 35,210 | 14,874 | 50,084 | 60,221,808 |

| | | | | |
|------------------------------|----------------|---------------|----------------|--------------------|
| 1st July 2018-30th June 2019 | 40,785 | 17,764 | 58,549 | 81,033,185 |
| 1st July 2019-31st June 2020 | 28,299 | 11,076 | 39,375 | 62,896,930 |
| 1st July 2021-30th June 2021 | 43,424 | 11,068 | 54,492 | 82,496,370 |
| Total | 199,018 | 72,382 | 271,400 | 359,853,788 |

Additionally, in the last five years the State Department has enhanced the capacity of **258,573 groups** through trainings and linkages of **266,753 community groups** to Micro Finance Institution (MFIs) and other centralized and decentralized funds such as Uwezo Fund, Women Enterprise Fund (WEF), Youth Enterprise Development Fund (YEDF), National Fund for Persons with Disabilities, National Government Affirmative Action Fund, among others for financial and technical support in the last five years.

3.0 Rationale for the Bill

Registration of community self-help groups has contributed significantly to the growth of community members and individuals by continuously enabling them to benefit from shared opportunities and enhancing their social capital and self-reliance eventually leading to home grown sustainable development.

However, the absence of a Legal Framework has hampered the growth and development of these community groups. Apart from the **Executive Order No. 1 of 2018** that specifically spells out on registration of self-help groups as a mandate of the State Department for Social Protection, Kenya has not had an explicit legal framework to guide in the registration and management of these groups. Mobilization and management of the groups has relied heavily on various guidelines and procedures developed by the Ministry responsible for Social Development.

Over the years, the Ministry has experienced numerous challenges while trying to effectively respond to the needs of these groups, and more so where conflict, leadership wrangles, misappropriation of group resources and assets have occurred. Unregulated registration and management of community groups has led to weak complaints and grievance redress mechanisms. This has also in

some instances led to exclusion, marginalization and exploitation of the vulnerable members in the society.

It is in this regard, that the Ministry initiated the process of developing the Community Group Registration Bill, to provide a framework for registration and management of community groups. It is anticipated that the enactment of this Bill will allow for streamlined registration and management of community groups. This Bill will help create an enabling environment that will provide for recognition of these groups as legal entities, hence fostering sustainable socio-economic development.

4.0 Process of Developing the Bill

The development of this Bill was initiated by the Ministry through the Directorate of Social Development in 2016/2017FY. The process entailed consultation with various stakeholders and relevant Government Ministry and Agencies; including Kenya Law Reform Commission, State Law Office, Council of Governors, Academic Institutions, Civil Society Organizations, Faith Based Organizations and Community members among others. The Kenya Law Reform Commission (KLRC) and State Law Office provided technical support and guidance in the drafting of the Bill (**Annex I Correspondences**).

The Bill was subjected to other Public Participation processes through various forums which include;

- Published in MyGOV.com Newspaper of February 20, 2018 calling for views from the public. (**Annex 2**)
- Uploaded in the State Department's website- www.socialprotection.go.ke for access by the public
- Stakeholder forums such as;
 - ✓ Several stakeholders' meetings held to develop the legislative scheme that facilitated the development of the draft Bill. (**Annex 3**)
 - ✓ Validation meeting for Stakeholders was held on March 14, 2018 in Nairobi. (**Meeting report annex 4**)
 - ✓ The Bill was shared with members of the Parliamentary Committee on Labour & Social Welfare on March 29, 2019. (**Annex 5**).

- ✓ Another stakeholder's meeting was held on 9th April, 2019 in Nairobi to build consensus on the critical issues raised by the members of the Parliamentary Committee on Labour and Social Welfare. **(Meeting report annex 6)**

The comments and input received from all the forums **(Annex 7)** were incorporated into the draft Bill with assistance from a team of officers from the Kenya Law Reform Commission (KLRC).

5.0 Benefits of the Bill

- Provides a regulatory framework for registration, management and regulation of community groups in the country;
- Creates an enabling operational environment that promotes community empowerment, self-reliance and sustainable development of community groups and projects;
- Provide for protection of the rights of community groups;
- Enhance governance within groups by providing for accountability mechanisms (group leadership, constitution, reporting mechanism among others):
- Facilitate collaborations and linkages between community groups, National and County governments, financial institutions and other stakeholders;
- Enhance social cohesion and tolerance within community group members;
- Support resource mobilization for groups through acquisition of group certificate;
- Allow for group savings and loans uptake from financial institutions;
- Provides group members with a sense of Identity, belonging, ownership and freedom of association;
- Provides for a platform for grievance redress and conflict resolution;
- Provides for establishment of a Database for all registered community groups in the country; and
- Provide for part of the resources raised through group registration to be ploughed back to the Counties for group development.

6.0 Financial implications

The implementation of the Community Group Registration Bill will require resources from both Government and Development Partners. The Implementation of the Bill by the State Department for Social Protection will be through the Medium-Term Expenditure Framework (MTEF) budgeting process. One of the key instruments of the MTEF budgeting process is the Sector Working Groups and as such the Ministry shall participate through the Social Protection, Culture and Recreation Sector, to cost and prioritize resources for implementation of the Community Group Registration Bill once enacted.

Simon K. Chelugui, EGH
CABINET SECRETARY



**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION**

AMENDMENTS ON THE BILL FROM THE SUBMISSIONS BY STAKEHOLDERS FOR

**INCLUSION IN THE REPORT OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL
WELFARE MEETING HELD ON 31ST AUGUST 2021, ON THE CONSIDERATION OF THE COMMUNITY
GROUP REGISTRATION BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 20 OF 2021) IN MOMBASA,
ENGLISH POINT HOTEL**

| NO | PART | SECTION/CLAUSE | AS PER THE BILL | AMENDED TO READ AS PER THE SUBMISSION FROM THE VARIOUS STAKEHOLDERS |
|-----------|---------------|-----------------------|---|---|
| 1. | PART 1 | Preliminary | "Community group" means a voluntary association of individuals from the same community which is self organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit and includes a special interest group, community project and community-based organisation but shall not include groups formed to champion a | "community group" means a voluntary association of individuals from the same community which is self-organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit and includes a special interest group, community project and community-based organisation but shall not |

| | | | | |
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| | | | political cause or contrary to public policy; | include a Public Benefit Organization, NGO or groups formed to champion a political cause or contrary to public policy. |
| | Preliminary | CSOs Not defined in the Bill Proposals to define CSOs | To be included in PART 1 under preliminary section to read... “Civil Society Organizations” referred in the Bill are organizations that are providing technical and advocacy support to the communities but not funding. | |
| | Preliminary | Community Group Constitution not defined in the Bill Proposal to define Community Group Constitution | To be included in PART 1 under preliminary section to read... “Community Group Constitution” means ‘basic rules or by-laws set by the group members themselves to govern the operations of their group or any projects that they may be undertaking’ | |
| 2. | PART II ADMINISTRATION | Section 3 | Additional responsibility for the Director to be included under clause 3 | The Clause to be included 3 (1) (g) in the Bill to read |

| | | | |
|-----------------|--|--|---|
| | | | <p>“Approving, monitoring and evaluating the budget proposal provided by the Social Development Committee”</p> <p>h)- former (g)</p> <p>i)-former (h)</p> |
| Section 5(1), a | | (a)the sub-county social development officer; | <p>To specify the sub-county social development officers referred in the bill to read as.....</p> <p>(a)the sub-county social development officer from the National government;</p> |
| Section 5 (b) | | (b) the officer responsible for social development in the county government; | <p>Amended to read</p> <p>(b) Two representatives from the county government, one must be the officer responsible for social development;</p> |
| Section 5 (e) | | (e) five representatives of registered community groups operating in the | <p>To read as</p> <p>(e) four representatives of registered community groups</p> |

| | | | |
|--|----------------------|---|--|
| | | <p>sub-county who shall be nominated by the community groups; and</p> | <p>operating in the sub-county who shall be nominated by the community groups; and</p> |
| | <p>Section 5(2)</p> | <p>(2) A sub-county social development committee shall include representatives of persons with disability, women and youth.</p> | <p><i>Section 5 (2) to read as.... "A sub-County Social Development Committee shall take into consideration gender, equality, disability and ethnicity pursuant to Articles 27, 54 and 55 of the Constitution</i></p> |
| <p>3. PART III REGISTRATION OF COMMUNITY GROUPS</p> | <p>Section 10(2)</p> | <p>(2) A rule or a purpose within the constitution of a community group that is inconsistent with the Constitution, this Act or any written law shall have of no effect to the extent of the inconsistency.</p> | <p>Amended to read as..... (2) A rule or a purpose within the community group constitution that is inconsistent with the Constitution, this Act or any written law shall be inconsistent to the extent of its inconsistency.</p> |
| | <p>10(3)</p> | <p>(3) The information contained in the Model Community Group Constitution set out in the Second Schedule shall be sufficient for the purposes of this Act and a community group may adopt the</p> | <p>Amended to read as.... (3) The information contained in the Model Constitution of a Community Group set out in the Second Schedule shall be sufficient for the purposes of this Act and a community</p> |

| | | | |
|-------|--|--|---|
| | | Model Community Group Constitution for its own purposes. | group may adopt the Model Constitution of a Community Group for its own purposes. |
| 13(3) | | To be included as a clause to take care of appeal after clause (2) where the Director rejects the registration of a group | Where a community group registration has been rejected, the group members can appeal the decision by the Director with the relevant legal authority |
| 14(1) | | (1) A community group registered under this Act may, on the expiry of two years after its registration, apply to the Director in the prescribe form and after paying the prescribed fees for the renewal of its registration and, thereafter, apply for renewal of its registration at the expiry of a period of one year. | Amended to read..... (1) A community group registered under this Act may, on the expiry of two years after its registration, apply to the Director in the prescribe form and after paying the prescribed fees for <i>the affirmation of its existence.</i> |
| 16(6) | | (6) The Director shall, before acting in accordance with subsection (4), ensure that the assets of the community group have been properly distributed any outstanding claims have been settled, and the Director may impose such conditions as may be necessary for the The Community Groups Registration Bill, 2021 639 protection of the welfare of | Proposal for the Bill to state what happens to the assets of the groups upon voluntary dissolution Amended to read as..... (6) The Director shall, before acting in accordance with subsection (4), ensure that the assets of the community group |

| | | | | |
|----|--|----------------------------|---|---|
| | | | the members of the group or the community. | have been properly distributed properly distributed any outstanding claims have been settled <i>as per the community group constitution</i> , and the Director may impose such conditions as may be necessary for the protection of the welfare of the members of the group or the community. |
| | | 17(5) | Additional clause 17(5) under merger of community groups | <i>To read as</i> <i>“A community group wishing to change name or constitution, shall issue a notice of change or constitution of the new community group and submit it to the Director in accordance with Section 17 (4) upon its merger”</i> |
| 4. | PART V FINANCIAL PROVISIONS | Section 32(2) © and 32 (3) | (3) After an account has been rendered under subsection (2), the treasurer shall, if the treasurer is resigning or vacating office or required to resign or vacate office, hand over to the succeeding treasurer, the monies as appear to be due from the treasurer, and all bonds, securities, effects, books, | Proposal for the Bill to highlight the conditions for vacation of office by the treasurer Amended to read as |

| | | | | |
|--|--------------|--|--|---|
| | | | <p>papers and property of the community group in the treasurer's hands or otherwise under the treasurer's control.</p> | <p>(3) After an account has been rendered under subsection (2), the treasurer shall, if the treasurer is resigning or vacating office or required to resign or vacate office, hand over to the succeeding treasurer, the monies as appear to be due from the treasurer, and all bonds, securities, effects, books, papers and property of the community group in the treasurer's hands or otherwise under the treasurer's control <i>as guided the community group constitution and in consideration with other laws of the land.</i></p> |
| <p>5.</p> <p>PART VI</p> <p>GENERAL PROVISIONS</p> | <p>40(2)</p> | | <p>Additional clauses on regulations to be prescribed by the Cabinet Secretary</p> | <p>Added clauses are in red</p> <p>(a) Guidelines on group registration and management under this Act;</p> <p>(b) the forms to be used for the purposes of this Act;</p> <p>(c) the particulars to be included in—</p> |

| | | | |
|--|--|--|--|
| | | | <p>(i) applications or notifications to the Director;</p> <p>(ii) certificates of registration issued by the Director;</p> <p>(d) the procedures and requirements for registration, suspension and cancellation of registration of any community group;</p> <p>(e) procedures and requirements for reinstatement of groups registration under this Act;</p> <p>(f) guidelines on the registration of special interest groups under this Act</p> <p>(g) information to be included in the register of a community group;</p> <p>(e) the records to be kept by a community group;</p> <p>(h) charges, fees or other payments under this Act;</p> <p>(i) guidelines for community mobilisation;</p> |
|--|--|--|--|

| | | | | |
|----|---|--|--|--|
| | | | | <p>(j) the guidelines for resource mobilisation;</p> <p>(k) dispute resolution procedures under this Act;</p> <p>(l) guidelines for the establishment of social development committees; and</p> <p>(m) any other matter or thing required to be prescribed to give effect to the provisions of this Act.</p> |
| 6. | <p>SECOND SCHEDULE</p> <p>MATTERS TO BE PROVIDED FOR IN THE CONSTITUTION OF A COMMUNITY GROUP</p> | | <p>Provision of assets disposal by the group was not provided in the constitution of a community group</p> | <p>Added as no 12 to read as</p> <p>12. Group Assets</p> <p>The procedures for handling the distribution, disposal and sharing of assets and upon voluntary dissolution</p> |



**OFFICE OF THE PRESIDENT
MINISTRY OF INTERIOR
AND CO-ORDINATION
OF
NATIONAL GOVERNMENT**

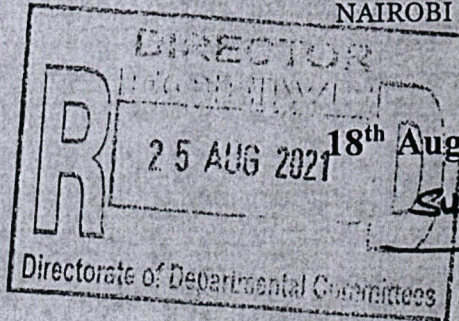
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*DD Committee
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24/08/21*

Telegraphic address: "Rais"
Telephone: 020-2227411
When replying please quote

P.O. Box 30510- 00100
NAIROBI

Ref: MICNG/SEC.1/26



Clerk of the National Assembly
NAIROBI

*Susan Mainin
pls facilitate
Mq M/V
25/8/21*

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE: CONSOLIDATION OF THE COMMUNITY GROUPS REGISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2021)

We are in receipt of your letter Ref. NA/DCS/LSW/2021 (046) dated 10th August, 2021 in which you requested us to provide comments on the above captioned Bill.

We have reviewed the Community Groups Registration Bill, 2021 and our comments are as follows:

| No. | Section | Comment |
|------------|----------------|--|
| 1 | Section 3 | The Bill needs to highlight on the appointing authority of the Director of Social Development? Similarly, it is noted that under Section 5(1), the County Co-ordinator establishes a Social Development Committee for a sub-county. It is therefore our proposal that a similar committee be established at the National level highlighting its |

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| | | |
|---|---------------|---|
| | | composition. |
| 2 | Section 3(2) | <p>a. It is observed that there will be programmes on capacity building and training and thus propose an additional responsibility of the director as follows ‘...approving, monitoring and evaluating the budget proposals provided by the Social Development Committee...’</p> <p>b. Issuing, suspending or cancelling of a registration of a community group.</p> |
| 3 | Section 4(3) | It is proposed that a county committee be established at the county while highlighting its composition. |
| 4 | Section 5(1) | <p>a. The composition of the social development committee is bloated; it is therefore our proposal that the membership be reduced to 9 to allow for quick decision making.</p> <p>b. We propose for an additional clause on co-option where a member can be co-opted to the committee as and when the need arises.</p> <p>c. Section 5(2) to read as follows ‘...A sub-county social development committee shall take into consideration gender, equality, disability and ethnicity pursuant to Articles 27, 54 and 55 of the Constitution.</p> |
| 5 | Section 10(2) | <p>a. Amend it to read as follows ‘... A rule or a purpose within the Community Group Constitution that is inconsistent with the Constitution, this Act or any written Law shall be inconsistent to the extent of its inconsistency...’</p> <p>b. Replace the words constitution of a community group with community group constitution</p> <p>c. Define the words Community Group Constitution</p> |
| 6 | Section 14(1) | Not clear |
| | Section 17 | It is proposed to include a clause to read as follows ‘... A community group wishing to change name or constitution, shall issue a notice of change of name or constitution of |

| | | |
|---|-----------------------------------|--|
| 7 | Section 32 (2) (c) and 32 (3) | We note that the Bill talks of vacating of office by the treasurer and therefore propose that it highlights the conditions for vacation of office. |
|---|-----------------------------------|--|



WILSON NJEGA,EBS

FOR: PRINCIPAL SECRETARY/INTERIOR & CITIZEN SERVICES

**MEMORANDUM ON THE COMMUNITY GROUP REGISTRATION BILL FROM
THE NGO'S CO-ORDINATION BOARD**

To:

The National Assembly,
Office of the Clerk,
Parliament Buildings,
P.O Box 41842-00100
Nairobi

18th August 2020

INTRODUCTION

The Non-Governmental Organizations Co-ordination Board is a state corporation established under section 3 of the Non-Governmental Organizations Co-ordination Act No.19 of 1990. It is mandated with the responsibility of regulating all organizations registered under the Act as per Section 7.

REMARKS

The Bill provides a framework for the mobilisation, registration, coordination and regulation of community groups in a bid to make them viable.

PART I - PRELIMINARY

The Bill defines a community as persons who reside in the same geographic locality or who are considered as a unit because of their shared common interests. It further defines a community group as a voluntary association of individuals from the same community which is self-organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit.

This is different from the definition of a Non-Governmental Organization as provided for under the NGOs Co-ordination Act of 1990 which states that an NGO is a private voluntary grouping of individuals not operated for profit or other commercial purposes but which have organised themselves Nationally or Internationally for the benefit of the public at large and for the promotion of social welfare, development charity or research in the area inclusive of, but not restricted to health, relief, agriculture, education, industry and the supply of amenities and services.

From the definition, it is clear that community groups are not limited to charitable or public benefit objectives as may be with the NGOs Act or PBOs Act. Some of the community groups that may qualify for registration under this law include social groups such as resident associations, book clubs and other shared interest groups. Previously, for such groups to be registered, they would either be societies or public benefit organisations.

We propose for the amendment of the definition of “*community group*” under **Clause 2** as follows;

“community group” means a voluntary association of individuals from the same community which is self-organised for a common purpose aimed at improving the livelihood of the group members or for a community benefit and includes a special interest group, community project and community-based organisation but shall not include a Public Benefit Organization, NGO or groups formed to champion a political cause or contrary to public policy.

Clause 12

Clause 12 may lead to a possible conflict of interest between NGOs or PBOs and community groups. We cannot ignore the fact that some community groups may ride on the name of some NGOs/PBOs to get funding from the unknowing public philanthropists. We therefore propose the amendment of clause 12 by inserting the following clause after clause 12 (1) (e) to read as follows:

(f) the proposed name of the community group is identical to or resembles the name of a registered community group or National or International Non-Governmental Organization or Public Benefit Organization as to be likely to mislead the public as to its nature or identity.

We also propose that a standard name search mechanism should be established to avoid double registration of organizations under more than one legal regime and duplicity of registration. A standard name search database which will be used to reserve names for NGOs or PBOs, CBOs, Community Groups, Societies and other charitable organizations.

PART II - ADMINISTRATION

There is need for a clear definition of the use of the words *Civil Society Organizations (CSOs)* as referred to in section 4 (3) (b) and section 5 (1) (d). Currently, the term Civil Society Organization is used very loosely sometimes to refer to NGOs and this is a likely point of conflict between NGOs and Community Groups

The Bill creates an office of the Director of Social Development, an office in the public service that shall be in charge of mobilising communities to form groups to undertake community projects, registration of community groups and supervision, monitoring and evaluation of community projects by community groups among others. The Bill is however silent on the qualifications that one is required to have to be appointed as a director.

PART III – REGISTRATION OF COMMUNITY GROUPS

The Bill fails to provide prescribed forms of registration which should be submitted together with the Constitution and should be provided for in the Schedules of the Bill.

The definition of special interest group is however vague as it defines it as a group comprised of individuals who share a common interest, that due to the unique nature of that interest, condition or need has failed to raise a large membership within the group. This leaves a lot of room for discretion to the director which may be used for discrimination.

Section 12 of the Bill provides that the Director may reject an application for registration but fails to provide an opportunity for Appeal. It is also silent on whether community groups can apply for Reinstatement upon cancellation of registration.

Section 16(6) refers to the distribution of assets upon voluntary dissolution. Community Groups are registered as self-help groups strictly for the benefit of the membership as opposed to NGOs which are registered as charitable organizations and whose assets are of a public nature and therefore the same is redistributed to other organizations of similar objectives. The distribution of assets in this case therefore is not clear as to whom the assets shall be distributed to.

Section 16(7) also fails to state what happens to the assets of the organizations upon voluntary dissolution.

PART IV – FINANCIAL PROVISIONS

The Bill provides that the community groups are required to maintain financial records. This is good for accountability and transparency. The NGOs Act and PBO Act encourages PBOs to form umbrella associations which can develop and publish codes of conduct applicable to members, governing body officials, staff and volunteers of PBOs. This form of self-regulation can be used by community groups to promote accountability and transparency amongst themselves.

We humbly submit.

Thank you.



COUNCIL OF GOVERNORS

**LEGISLATIVE MEMORANDUM ON THE COMMUNITY GROUPS REGISTRATION BILL
(NATIONAL ASSEMBLY BILL) NO 20 of 2021**

To

**THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE
OF THE
THE NATIONAL ASSEMBLY**

From

THE COUNCIL OF GOVERNORS

MEMORANDUM ON THE COMMUNITY GROUPS REGISTRATION BILL (NATIONAL ASSEMBLY BILL) NO 20 OF , 2021

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation is aligned to the Constitution and reflects the spirit and objects of devolution.

The Council hereby notes as follows on the **Community Groups Registration Bill (National Assembly Bill) No 20 of 2021**

General Comments;

1. The Bill seeks to provide a regulatory framework for the registration and regulation of community groups and for connected purposes.
2. The Bill establishes the following institutional arrangement
 - i. The office of the Director of Social Development, an office in the public service (National Government). The Director is the principal duty bearer.
 - ii. County co-ordinator of social development
 - iii. Social development Committee at the sub – county level
3. The Fourth Schedule of the Constitution provides the distribution of functions between the National Government and the County Governments
4. Part 2 of the Fourth schedule, specifically the fourteenth (14th) function, is exclusively assigned to County Governments. It stipulates as follows:

"Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level"

5. The Unbundling and transfer of functions is a constitutional interpretation and application exercise that ought to be objectively undertaken based on the constitutional provisions and informed by key fundamental objects and principles.

Objects and principles

1. Objects

The objects of the devolution are as set out in Article 174 and relevant to the subject matter—

- (c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;*
- (d) to recognise the right of communities to manage their own affairs and to further their development;*
- (e) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;*
- (h) to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya;*

2. Principles

- i. That governments at the national and county levels are distinct as provided in Article 6 (2)
- ii. The exclusive/concurrent dichotomy of functions

The assignment of functions and powers under Article 186(2) of the constitution recognizes that while some functions are assigned as exclusive functions of each level of government, others are concurrent functions of both levels of government.

- iii. Cooperation between national and county governments

The principle requires that Government at either level

- a) to perform its functions, and exercise its powers, in a manner that **respects the functional and institutional integrity** of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;
- b) assist, support and consult and, as appropriate, implement the legislation of the other level of government; and
- c) liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.

Unbundling of the Fourth Schedule Part 2(14)

Notably, the Transition Authority unbundled the 14th county function as follows:

- i. Developing systems, standards and operational procedures for community participation;

- ii. Facilitating formation/ restructuring of community level structures for community engagement and participation in development Initiatives;
- iii. Facilitating formation, registration and certification of community groups;
- iv. Undertake Community groups capacity building and sensitization;
- v. Providing Grant support to community groups to support up-scaling/ replication of best practices; and
- vi. Facilitation to Community Capacity support centers.

The unbundled function enumerated above are similar to the functions provided in the Bill- **see analysis marked COG 1**

It is on the basis of the above fundamental objects and principles and the unbundled function undertaken by a constitutionally mandated entity that the County Governments analysis the Bill as below;

COMMENTS ON SPECIFIC PROVISIONS

| Part/Section | Proposed Amendment |
|---|---|
| <p>Long title: AN ACT of Parliament to provide a regulatory framework for the registration and regulation of community groups and for connected purposes</p> | <p>Amend to read: AN ACT of Parliament to provide a regulatory framework for the registration and regulation of community groups and to give effect to the fourth schedule part ii (14) of the Constitution and for connected purposes</p> |
| <p>Part 1 "Cabinet Secretary"</p> | <p>Amend to read: "CECM" means the County Executive Committee member responsible for social development in the county</p> |
| <p>"Director"</p> | <p>Amend to read: "CECM" means the County Executive Committee Member responsible for social development at in the county</p> |
| <p>"Social development officer"</p> | <p>Amend to read: "Social development officer" means an officer in an office established by the County Public Service Board as such.</p> |
| <p>Part II Section 3 (1)</p> | <p>Amend to read: The County Governor shall designate a County Executive Committee Member to be responsible for Social Development</p> |
| <p>Section 3 (2): The Director</p> | <p>Amend to read: The CECM</p> |
| <p>Section 3 (2) (h)</p> | <p>Amend to read: Performing such other functions as may be assigned by the Governor, the County Executive Committee, national legislation or county legislation</p> |
| <p>Section 4 (1)</p> | <p>Amend to read: The county government shall appoint a social development officer for each ward</p> |
| <p>Section 4 (2)</p> | <p>Amend to read: A social development officer shall be responsible for performance of the CECMs duties in the assigned area</p> |

| | |
|---|--|
| Section 4 (3) | DELETE 4(3)(a) and (b). |
| Sec 5 | DELETE. The administrative structures provided by county executive suffice. |
| Sec 6 | The functions set out in 6 should be functions undertaken by the structures as the Ward level. |
| Section 8 | DELETE. The provision is redundant as it applies in ALL instances in the public service |
| Section 9 (1) (3), 10 (4) | Amend by replacing: “Director” with “CECM” |
| Section 9 (4) | Amend by replacing: “Director” with “County Government” |
| Section 11 (1) | Amend by replacing: the first “Director” with “CECM” and second “Director” with “County Government” |
| Sections 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26 (5, 6, 7, 8), 27 (1) 28 (3), 33, 34, 35, 36, 38, 40 | Amend by replacing: “Director” with “CECM” |
| Sections 25 (3), 37 (3), 40 | Amend by replacing: “Cabinet secretary” with “CECM” |
| Section 26 (2) | Amend to replacing: “sub-county social development committee which” with “ward social development officer who” |
| 26 (3) | Amend to replacing: “a sub-county social development committee” with “the ward social development officer” and “the county social development committee” with “the sub county administrator” |
| 26 (2)(3) (4) | Need to revisit the dispute resolution mechanism – it is too layered and goes against the principles of expediency and efficiency in administrative action as outlined in Art 47 of the Constitution. It is proposed that any dispute be referred to the County Executive Committee member and appeal preferred to the High Court |
| Transitional provisions | Not provided for in the Bill Add 41(2) “All records held by the National Government in respect to community groups registered shall be transferred to the relevant Counties within 6 months of commencement of this Act” |

Conclusion and recommendation

From the foregoing, the County Governments oppose the Bill in its entirety on the following grounds

1. That the Bill contravenes the Constitution of Kenya and is a flagrant claw back on devolution.
2. A Bill cannot legislate on county functions and assign national structures to implement the law.

It is recommended that the Bill is reworked to become a legislation to give effect to the 14th function in Part 2 of the Fourth schedule.

ANALYSIS OF THE UNBUNDLED FUNCTION AND CORRESPONDING FUNCTION IN THE BILL

| S / N O | UNBUNDLED FUNCTIONS | CORRESPONDING FUNCTIONS IN THE BILL |
|------------------|--|--|
| 1 | Developing systems, standards and operational procedures for community participation; | <ul style="list-style-type: none"> • the establishment and maintenance of a community development management information system; • support in dispute resolution and management of community groups; |
| 2 | Facilitating formation/ restructuring of community level structures for community engagement and participation in development Initiatives; | <ul style="list-style-type: none"> • mobilizing communities to form groups to undertake community projects; |
| 3 | Facilitating formation, registration and certification of community groups; | <ul style="list-style-type: none"> • the registration of community groups; |
| 4 | Undertake Community groups capacity building and sensitization; | <ul style="list-style-type: none"> • the establishment of capacity-building and training programmes for community groups; |
| 5 | Providing Grant support to community groups to support up-scaling/ replication of best practices; and | <ul style="list-style-type: none"> • enhancing partnerships, collaboration and linkages with other persons, groups or organisations for the benefit of the community; |
| 6 | Facilitation to Community Capacity support centers | <ul style="list-style-type: none"> • enhancing partnerships, collaboration and linkages with other persons, groups or organisations for the benefit of the community; |

My comments were made in the context of the specific issues that had been highlighted by the Chairperson from the presentations by the CEO of the NGO Co-ordination Board and the representative of the Council of Governors.

As I was able to understand it, they raised two main issues:

1. Whether or not we needed a new legislation for the registration of Community Groups when the legal framework already has the NGO Co-ordination Act, the Public Benefits Organisations Act, and the Societies Act.

2. Whether or not, in light of the provisions of Part 2 of the Fourth Schedule to the Constitution, the legislation should have been made at national level or at county level.

As to the first issue, the policy falls within the jurisdiction of the Ministry of Labour and Social protection which, as I understand it, has registered social development groups through its social development officers. The current registration of such groups has been done administratively because there isn't a legislative framework for the same. The proposed Bill is intended to address this gap in the legislative framework. It also complements the NGO Coordination Act, the PBO Act and the Societies Act.

As to the constitutional issues, we note that Article 191 of the Constitution allows, in certain circumstances, national legislation to supersede county legislation, if certain conditions are satisfied. These conditions include that the national legislation shall apply uniformly throughout Kenya [Art. 191(2)(a)] and the national legislation is necessary for the maintenance of national security [Art. 191(3)(c)]. The Ministry prepared and submitted a Cab Memo on the Bill to the Cabinet for approval, which approval was granted, hence the Bill was transmitted to Parliament in the usual manner. So far as I am aware, that policy has not changed, and we cannot see any significant constitutional issues on the Bill.

I hope that this is helpful.

Samson Davies Maundu
Principal Parliamentary Counsel
**Office of the Attorney-General
& Department of Justice**

ANNEXURE 6:

SCHEDULE OF PROPOSED AMENDMENTS

**SCHEDULE OF PROPOSED AMENDMENTS TO THE COMMUNITY GROUPS
REGISTRATION BILL, 2021.**

CLAUSE 2

THAT, Clause 2 of the Bill be amended—

- a) In the definition of the term “community groups” by inserting the words “Public Benefit Organization, Non-Governmental Organization or” immediately after the words “ but shall not include”
- b) by inserting the following new definitions in proper alphabetical sequence—

“Civil Society Organizations” means organizations that provide technical and advocacy support to the communities but do not provide funding

“Community Group Constitution” means basic rules or by-laws set by a community group to govern the operations of their group or any projects that the groups may undertake’

“Non-Governmental Organisation” has the meaning assigned to it under the Non-Governmental Organizations Act;

“Public Benefits Organization” has the meaning assigned to it under the Public Benefits Organizations Act;

CLAUSE 3

THAT, Clause 3 of the Bill be amended in subclause (2) by inserting the following new paragraph after paragraph (g) —

- (ga) approving, monitoring and evaluating the budget proposal provided by social development committees

CLAUSE 5

THAT, Clause 5 of the Bill be deleted and substituted with the following new clause—

Social
development
committees.

- 5.** (1) There is established, in every sub-county, a committee to be known as the social development committee which shall comprise—

- (a) the sub-county social development officer from the national government;
- (b) two representatives from the county government, one of whom shall be the officer responsible for social development in the county government;
- (c) a representative of the Deputy County Commissioner responsible for the sub-county;
- (d) four representatives of development partners and civil society organizations operating in the county who shall be nominated by the county coordinator of social development;
- (e) five representatives of registered community groups operating in the sub-county who shall be nominated by the community groups; and
- (f) where necessary or practicable, representatives of national government ministries, departments or agencies operating in the sub-county.

(2) The persons under sub-section 1(a),(b),(c),(d) ,(e) and (f) shall be appointed by the county co-ordinator of social development who shall, in making the appointments, take into ensure ethnic and regional balance and the inclusion of persons with disabilities.

(3) The sub-county department responsible for social development shall provide the secretariat for the social development committee.

CLAUSE 10

THAT, Clause 10 of the Bill be amended in subclause (2) by deleting the words “the constitution of a community group” and substituting therefor the words “a community group constitution”.

CLAUSE 12

THAT, Clause 12 of the Bill be amended—

- (a) in paragraph (b) by inserting the words “or immoral” immediately after the word “unlawful” wherever it appears;
- (b) in paragraph (e) by inserting the words “Public Benefit Organization or Non-Governmental Organization” immediately after the words “registered community group”

CLAUSE 13

THAT, Clause 13 of the Bill be amended by inserting the following new subclause immediately after subclause (2) —

“(3) A person aggrieved by the decision of the Director may appeal to the Cabinet Secretary in writing”

CLAUSE 16

THAT, Clause 16 be amended in subclause (6) by inserting the words “in accordance with the community group’s constitution” immediately after the word “settled”

CLAUSE 17

THAT, Clause 17 of the Bill be amended by inserting the following new subclauses immediately after subclause (6) —

“(6) A merged community group may change its name or constitution by issuing a notice of the change of name or constitution to the Director.

(7) A notice of change of a community group constitution under subsection (6) shall be accompanied by the new community group constitution.

CLAUSE 32

THAT, the Bill be amended in subclause (3) by inserting the words as “guided the community group constitution and in consideration with other written laws” ” immediately after the words “treasurer's control”

CLAUSE 40

THAT, the Bill be amended by —

(a) deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) procedures, requirements and guidelines on registration, suspension, cancellation and reinstatement of registration of any community group including a special interest group;”

(b) inserting the following new paragraph immediately after paragraph (j) —

“(ja) guidelines on community group management;”

SECOND SCHEDULE

THAT, the Second Schedule to the Bill be amended by inserting the following new paragraph immediately after paragraph 12—

Group Assets

12A. The procedures for handling the distribution, disposal and sharing of assets and upon voluntary dissolution.