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THIRTEENTH PARLIAMENT – FOURTH SESSION - 2025


DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL
SECURITY

REPORT ON: -

THE ASSEMBLY AND DEMONSTRATION BILL, 2024
(NATIONAL ASSEMBLY BILLS NO. 28)

SPONSORED BY
HON. GEOFFREY KIRINGA RUKU, MP

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TABLED BY:	VICE-CHAIRPERSON, DEPTAL COMMITTEE ON ADMINISTRATION & INTERNAL SECURITY
CLERK-AT THE-TABLE:	J Lemeche

INTERNAL SECURITY

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CHAIRPERSON'S FOREWORD

The Assembly and Demonstration Bill, 2024, sponsored by Hon. Geoffrey Kiringa Ruku, MP was read a First Time on 7th August, 2024 and committed to the Departmental Committee on Administration and Internal Security for consideration and reporting to the House, pursuant to Standing Order 127(1).

The principal object of the Bill is to provide a legal framework for the regulation of assemblies, demonstrations, picketing and petitions. It seeks to give effect to Article 37 of the Constitution which provides for the right to assembly, demonstration, picketing and petition.

Pursuant to Article 118(1) (b) of the Constitution and Standing Orders 127(3), advertisements for request for submission of memoranda were placed in the Daily Nation and the Standard newspapers on 19th August, 2024 inviting interested members of the public to submit views on the Bill. The Committee received submissions from government agencies, civil society organizations and members of the public. All the submissions were considered by the Committee and are annexed to the report.

The Committee, having considered the Assembly and Demonstration Bill, 2024 sponsored by the Hon. Geoffrey Kiringa Ruku, MP clause by clause and taking into consideration views and recommendations of the stakeholders pursuant to Standing Order 127(3A), made observations and recommendations contained in Part Four and Part Five of this report.

Acknowledgement

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings.

On behalf of the Committee, and pursuant to Standing Order 127(4), it is my pleasant duty to table the Report of the Departmental Committee on Administration and Internal Security on its consideration of the Assembly and Demonstration Bill, 2024 sponsored by the Hon. Geoffrey Kiringa Ruku, MP.

**HON. GABRIEL TONGOYO, CBS, MP
CHAIRPERSON**

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & INTERNAL SECURITY

PART I

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Administration and Internal Security is constituted pursuant to the National Assembly Standing Order 216(1) which mandates Departmental Committees to-
 - a. *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - b. *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
(ba) on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
 - c. *study and review all legislation referred to it;*
 - d. *study, assess and analyze the relative success of the Ministries and departments by the results obtained as compared with their stated objectives;*
 - e. *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;*
 - f. *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);*
(fa) examine treaties, agreements and conventions;
 - g. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - h. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - i. *examine any questions raised by Members on a matter within its mandate.*

1.2 Subjects of the Committee

2. In executing its mandate, the Committee is mandated to consider the following subjects:
 - a. Home affairs, internal security – including police services and coast guard services;
 - b. Public administration; and
 - c. Immigration and citizenship.

1.3 Committee Membership

3. The Committee comprises of the following Members: -

Hon. Gabriel Tongoyo, CBS, MP
Chairperson
Narok West Constituency

Hon. Col. (Rtd.) Dido Rasso, MBS, MP
Vice Chairperson
Saku Constituency

Hon. Kaluma Peter, CBS, MP
Homa Bay Constituency

Hon. (Dr.) Peter F. Masara, MP
Suna West Constituency

Hon. Aduma Owuor, MP
Nyakach Constituency

Hon.(Prof) Protus E. Akujah, MP
Loima Constituency

Hon. Fred C. Kapondi, MP
Elgon Constituency

Hon. Rozaah Akinyi Buyu, MP
Kisumu West Constituency

Hon. Liza Chepkorir Chelule, MP
Nakuru County

Hon. Caroline Ng'elechi, MP
Elgeyo-Marakwet County

Hon. Sarah Paulata Korere, MP
Laikipia North Constituency

Hon. Francis Sigei, EBS, MP
Sotik Constituency

Hon. Oku Kaunya, MP
Teso North Constituency

Hon. Hussein Weytan, MP
Mandera East Constituency,

Hon. Mburu Kahangara, MP
Lari Constituency

1.4 Committee Secretariat

4. The Committee Secretariat consists of the following:

Mr. John Mugoma
Head of Secretariat

Ms. Grace Wahu
Clerk Assistant II

Mr. Edison Odhiambo
Fiscal Analyst I

Ms. Delvin Onyancha
Research Officer II

Ms. Judith Kanyoko
Legal Counsel II

Mr. Rodgers Kilungya
Audio Officer

Mr. Gideon Kipkogei
Clerk Assistant II

Ms. Clarah Kimeli
Principal Legal Counsel II

Mr. Benson Kimanzi
Serjeant at Arms

Ms. Ivy Maritim
Media Relations Officer III

PART II

2.0 THE ASSEMBLY AND DEMONSTRATION BILL, 2024

2.1 Analysis of the Bill

5. The following is the analysis of the Bill: -
6. **CLAUSE 1** of the Bill provides for the short title.
7. **CLAUSE 2** of the Bill provides for interpretation which provides for the definition of terms used in the Bill including assembly, convenor, demonstration, marshal, organizer, public gathering, riot damage, public place and regulating officer.
8. **CLAUSE 3** of the Bill provides for the objects and purposes of the Bill which are to—
 - (a) recognise the right of peaceful assembly and demonstration;
 - (b) ensure, so far as it is appropriate to do so, that persons may exercise the right to participate in assemblies and demonstrations;
 - (c) ensure that the exercise of the right to participate in assemblies and demonstrations is subject only to such restrictions as are necessary and reasonable in a democratic society in the interests of—
 - (i) public safety;
 - (ii) public order; and
 - (iii) the protection of the rights and freedoms of other persons.
 - (d) ensure that the right of persons to participate in assemblies and demonstrations may be exercised without payment of a fee, charge or other amount for a license, permit or other authorization.
9. **CLAUSE 4** provides for the application of the Act. It provides that the Act is to apply to all members of the public, and shall consider the right of members of the public to enjoy the natural environment and carry on business.
10. **CLAUSE 5** of the Bill exempts the Act from the common law of trespass. It provides that the Act does not affect the common law of trespass including the right to request a trespasser to vacate the land and the right to remove the trespasser from the land.
11. **CLAUSE 6** of the Bill provides for the limitation of the right to peaceful assembly and demonstration provided for under Article 37. It provides for the manner of limitation of the right. It provides that the right may not be exercised where an assembly or demonstration may affect public safety, public order and the protection of the rights and freedoms of other persons.

12. **CLAUSE 7** of the Bill provides for application to hold assembly or demonstration. It prohibits a person from holding an assembly or demonstration except in accordance with the provisions of clause 7. It further requires a person intending to convene an assembly or demonstration to notify the regulating officer of such intent at least three days but not more than fourteen days before the proposed date of the assembly or demonstration. A notice by a person intending to convene an assembly is to be in the form prescribed in the regulations and to specify—
- (a) the full names and physical address of the organiser of the proposed assembly or demonstration;
 - (b) the full names and physical addresses of the marshals appointed by the convenor, if any;
 - (c) the proposed date of the assembly or demonstration and the time thereof which shall be between six o'clock in the morning and six o'clock in the afternoon;
 - (d) the proposed site of the assembly or demonstration or the proposed route in the case of a public procession.
13. The Bill further requires the regulating officer to notify the organizer where it is not possible to hold the proposed assembly or demonstration because a notice of another assembly or demonstration on the date, at the time and at the venue proposed has already been received by the regulating officer. The notification by the regulating officer to the organizer is to be in writing and is to be delivered to the organiser at the specified physical address. Where the regulating officer notifies the organiser of an assembly or demonstration that it is not possible to hold the proposed assembly or demonstration, such assembly or demonstration shall not be held on the date, at the time and venue proposed, but may be held on such future date as the organiser may subsequently notify.
14. This clause further requires the organiser of an assembly or demonstration or his authorised agent to be present throughout the assembly or demonstration and to assist the police in the maintenance of peace and order at the assembly or demonstration. The Bill proposed to permit the regulating officer or any police officer of or above the rank of inspector to stop or prevent the holding of—
- (a) any assembly or demonstration held contrary to the provisions of clause 7;
 - (b) any assembly or demonstration which, having regard to the rights and interests of the persons participating in such assembly or demonstration, there is clear, present or imminent danger of a breach of the peace or public order,
15. For the above reasons, the regulating officer or any police officer of or above the rank of inspector may give or issue such orders, including orders for the dispersal of the assembly or demonstration as are reasonable in the circumstances, having regard to the rights and freedoms of the persons in respect of whom such orders are issued and the rights and freedoms of others.

16. The Bill further creates the offence of refusing to obey and order for dispersal. It also creates the offence of taking part in an unlawful assembly under Chapter IX of the Penal Code, which includes holding, convening or organising or being concerned in the holding, or convening or organising of any such assembly or demonstration. The penalty for the offence is imprisonment for one year.
17. The Bill also permits the organiser of an assembly or demonstration to request the regulating officer that the police be present at such assembly or demonstration to ensure the maintenance of peace and order. Such a request shall be in writing and shall be delivered to the regulating officer at least three days before the proposed date of the assembly or demonstration. It further requires a regulating officer to keep a public register of all notices received and permits any person to inspect the register during working hours.
18. **CLAUSE 8** of the Bill provides for conditions for the conduct of assembly or demonstration. It permits the regulating officer to specify conditions for the holding of an assembly or demonstration in a written notice. The conditions shall relate to—
 - (a) a matter concerning public safety, the maintenance of public order; or the protection of the rights and freedoms of persons;
 - (b) the payment of the costs of cleaning up which may arise out of the holding of the assembly or demonstration;
 - (c) the recognition of any inherent environmental or cultural sensitivity of the place of assembly or demonstration; and
 - (d) the application to the place of assembly or demonstration of any resource management practice of a delicate nature.
19. **CLAUSE 9** of the Bill provides for the application to set aside or vary conditions. It permits the convener to apply to the High Court to set aside or vary a condition or prohibition where one is imposed. The judge may refuse or grant the application. Such an application is to be filed within three days after receipt of the notice of imposition of a condition or prohibition. A condition or prohibition under this clause is to remain in force until it is set aside or varied by the High Court. Where the High Court upholds the condition or prohibition, the regulating officer shall bar the place of the assembly or demonstration and keep it closed or inaccessible to the public for such time as may be necessary to prevent the assembly or demonstration from taking place.
20. **CLAUSE 10** provides for the conduct of assembly or demonstration. It requires a convener to appoint such a number of marshals mentioned in the notice to control the participants in the assembly or demonstration and to take necessary steps to ensure that the assembly or demonstration at all times proceeds peacefully. A convener is to ensure that the marshals and participants in the assembly or demonstration are informed timeously of the conditions of holding the assembly or demonstration, and requires that an assembly or demonstration

proceeds and takes place at the locality and in the manner and during the times specified in the notice.

21. **CLAUSE 11** of the Bill provides for prohibitions during an assembly or demonstration. It prohibits the following actions during an assembly or demonstration:

- (a) by way of a banner, placard, speech or singing or in any other manner incite hatred of other persons or any group of persons on account of differences in culture, race, sex, language or religion;
- (b) performing any act or uttering any words that are calculated or likely to cause or encourage violence against any person or group of persons;
- (c) wearing a disguise or mask or any other apparel or item which obscures his face or prevents his identification;
- (d) wearing any form of apparel that resembles any of the uniforms worn by security forces including the police and Kenya Defence Force; or
- (e) possessing any offensive weapon, otherwise than in pursuance of lawful authority.

22. **CLAUSE 12** of the Bill provides for liability for damage. Where during the carrying on of an assembly or demonstration, damage to property occurs as a result of an assembly or demonstration, the Bill proposes that every organization and every person participating in the assembly or demonstration is jointly and severally liable for such damage. It is a defence to a claim if such a person or organisation proves—

- (a) that he or it did not permit or connive at the act or omission which caused the damage in question;
- (b) that the act or omission in question did not fall within the scope of the objectives of the assembly or demonstration in question and was not reasonably foreseeable; or
- (c) that he or it took all reasonable steps within his or its power to prevent the act or omission in question:

23. Provided that proof that he or it forbade an act of the kind in question shall not by itself be regarded as sufficient proof that he or it took all reasonable steps to prevent the act in question.

24. **CLAUSE 13** provides for the powers of the police during assembly or demonstration. It provides that during the conduct of an assembly or demonstration, the police shall have the **power to—**

- (a) prevent the participants from proceeding to a different place or from deviating from the route specified in the relevant notice or from disobeying any specified condition;
- (b) restrict the gathering to a place or guide the participants along a route to ensure
 - (i) that vehicular or pedestrian traffic is not interfered with;

- (ii) an appropriate distance between participants in the assembly and rival assemblies;
 - (iii) access to property and workplaces;
 - (iv) the prevention of injury to persons or damage to property;
- (c) order any participant interfering or attempting to interfere with an assembly or demonstration to cease and to remain at a distance from such assembly or demonstration;
- take such steps as may be necessary to protect persons and property, whether or not they are participants in the assembly or demonstration.

25. **CLAUSE 14** provides for offences and penalties. It lists the following offences—

- (a) convening a public assembly with no or adequate notice;
- (b) knowingly contravening or failing to comply with the notice of a condition to which an assembly or demonstration is subject to;
- (c) hindering, interfering with, obstructing or resisting a police officer, convener, marshal or any other person in the exercise of his powers or the performance of his duties under the Act; or
- (d) being in possession of a weapon or any object unlawfully during an assembly or demonstration.

26. On conviction for the above offences, the Bill proposes a penalty of a fine not exceeding one hundred thousand shillings or imprisonment for a period not exceeding one year, or to both.

27. **CLAUSE 15 of the Bill provides for the making of regulations. It proposes to give the Cabinet Secretary power to make regulations for the better carrying into effect to its provisions. For the purposes of Article 94(6) of the Constitution the purpose and objective of delegation is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect of the provisions of the Act;**

28. The Bill further limits the authority of the Cabinet Secretary to make regulations to bring into effect the provisions of the Bill and to fulfil the objectives specified under clause 15. It sets the principles and standards applicable to the regulations made under clause 15 as those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

29. **CLAUSE 16** of the Bill provides for the repeal of sections 5, 6 of Cap. 56 which is the Public Order Act.

PART III

3.0 CONSIDERATION OF THE ASSEMBLY AND DEMONSTRATION BILL, 2024 BY THE COMMITTEE

3.1 The Legal Provision on Public Participation

30. Article 118 (1) (b) of the Constitution of Kenya provides as follows—

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”

31. Standing Order 127(3) provides that—

“The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—

- (a) inviting submission of memoranda;*
- (b) holding public hearings;*
- (c) consulting relevant stakeholders in a sector; and*
- (d) consulting experts on technical subjects.*

32. Standing Order 127(3A) further provides that—

“The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

33. Pursuant to the aforementioned provisions of the Constitution and Standing Orders, on public participation, the Committee through local daily newspapers of 19th August, 2024 published an advertisement inviting the public to submit memoranda on the Bill. The advertisement is annexed to this report as **Annexure 3**.

34. Further, vide a letter dated 11th February, 2025, the Committee invited relevant stakeholders, to make submissions on the Bill. The meeting was held on 18th February, 2025 in Committee Room 18/19, 3rd floor, Bunge Tower, Parliament Buildings. Stakeholder submissions are annexed as **Annexure 4**.

3.2 Submissions on the Bill

35. The Committee received submissions through written memoranda and oral presentations. In addition to submitting written memoranda, the following stakeholders also appeared before the Committee on 18th February, 2025 at 10.00 a.m. to give their oral presentation on the Bill:

- a. the National Police Service Commission (NPSC)

- b. the National Police Service (NPS)
- c. the Kenya National Commission on Human Rights
- d. the Independent Policing Oversight Authority (IPOA)
- e. Transparency International
- f. Katiba Institute
- g. WeCare Youth Organization
- h. Nabwire Obara Advocates
- i. PAWA²⁵⁴ and United Disabled Persons Kenya (UDPK) Police Reforms Working Group
- j. Kericho Civil Society & Tunaweza Organisation
- k. Mizani ²⁵⁴
- l. Kenya Conference of Catholic Bishops
- m. Kiambu Justice and Information Network (Kijin)
- n. Access Now and Kenya ICT Action Network (KICTANet)

36. Both the written memoranda and oral presentations contained general comments on the Bill as well comments on individual clauses of the Bill as analysed below—

3.3 GENERAL SUBMISSIONS

37. **The Ministry of Interior and National Administration** supported the enactment of the Bill and proposed the repeal of section 79 of the Penal Code on the penalty for unlawful assembly and substitution with the penalty under the Bill. The Ministry supported the enactment of the bill on the grounds that section 5 and 6 of the Public Order Act which has provisions dealing with assemblies and demonstrations is inadequate. The Ministry submitted that the bill is important because it—
- a. recognizes that the right to assembly is not absolute and may be limited;
 - b. places the onus of ensuring that the assembly is held peacefully on the convenor;
 - c. sets out the prohibitions during an assembly;
 - d. attaches liability for loss on organisations and participants in an assembly thus ensuring that those who suffer loss and damage have a recourse;
 - e. gives the police an active role in the assembly or demonstration; and
 - f. it satisfies the order of the *Court in Ngunjiri Wambugu v Inspector General of Police Caninet Secretary for Interior and the Attorney General (Nairobi Petition No. 269 of 2016)*.
38. **Fifty-members of the public** supported the enactment of the Bill on the grounds that the Bill—
- a. enhances public safety by establishing structured guidelines to prevent disruptions and ensure safety;
 - b. ensures legal clarity by providing a transparent process for organizing demonstrations and protects rights and property by balancing demonstrators' rights with public and property protection;
 - c. provides a structured engagement with authorities; and

- d. strengthens democratic participation by establishing a structured legal framework and supporting effective law enforcement:

39. **Four hundred and fifteen members** of the public proposed the rejection of the entire Bill on the grounds that it threatens to undermine the rights enshrined in Article 37 of the Constitution. They contend that the Bill grants the police excessive and unchecked powers to regulate, control, and prevent public assemblies and demonstrations, criminalises assemblies by imposing stringent conditions and penalties on organizers and participants and imposes unreasonable burdens on organizers by requiring them to navigate a complex and restrictive process before holding any public assembly.

Further, **forty-three members of the public** proposed the rejection or withdrawal of the Bill on the grounds that the Bill undermines the right to peaceful assembly by imposing restrictive application requirements, granting excessive police discretion to deny or suppress protests, and imposing severe financial penalties that deter participation. They submitted that the Bill interferes with freedom of expression and privacy thereby exposing demonstrators to state and non-state persecution. They submitted further that the Bill is vague, and its disproportionate restrictions fail to justify the limitation of rights under Article 37, making it unconstitutional and unjustifiable in a democratic society. A further **sixteen (16) members** of the public generally proposed the rejection of the Bill.

40. The **Independent Policing Oversight Authority (IPOA)** proposed the amendment of the Public Order Act to align with Constitutional provisions and international Human rights treaties ratified by Kenya and international best practices on public order management.

41. **Salma Khamala** proposed that the Bill be rejected in its entirety noting that the Bill threatens to severely undermine the constitutionally protected rights of Kenyans to assemble and demonstrate and that by placing the responsibility of cleaning up on protestors, the Bill ignores that police also participate in conduct that would require cleaning up.

42. **Nelly Maina** proposed that the Bill ought to—

- a. delimit the scope of police powers to avoid misuse or overreach as has been seen prevalent in the past;
- b. allow for spontaneous assemblies in urgent situations without the strict notification requirements in a bid to respect Article 37 of the Constitution;
- c. reduce the burden on organizers by limiting their liability for actions they did not foresee or endorse;
- d. and ensure that restrictions are proportionate to the need to maintain public safety, without undermining the constitutional right to peaceful assembly.

43. She noted that the Bill grants the police significant authority to impose conditions or even prohibit assemblies and demonstrations and that the requirement for organizers to give

notice to the police at least three days but no more than fourteen days before the assembly might hinder spontaneous assemblies, which are often a critical response to urgent events. She submitted that some of the prohibited actions, such as wearing clothing that resembles security force uniforms or inciting hatred through banners or speeches, might be too vague and may be subjectively interpreted and infringe on free speech. She also submitted that the Bill lacks Protection for Peaceful but inconvenient protests and has the potential to violate Constitutional Rights.

44. **Dennis Muturi** proposed that the Bill be revised to clearly define terms, streamline notice channels, establish effective dispute resolution mechanisms, prioritize explicit guidelines for de-escalation protocols, remove criminal sanctions, incorporate dialogue during assemblies and ensure sanctions are proportionate. He further proposed that the Bill be redrafted through broad and inclusive process. He submitted that the bill violates Article 37 of the Constitution, is punitive and retrogressive nature, and fails to address contemporary challenges such as an unclear notification regime. He also submitted that the bill lacks essential definitions for public order, and there is absence of civilian oversight during assemblies, disproportionate restrictions such as cleaning fees and conditional assemblies, lack of inclusive consultation with the civil society and failure to align with international best practices.
45. **Kiboi George Kimirei** proposed that that the Bill be amended to ensure that restrictions on assemblies are narrowly tailored and proportionate to a legitimate government objective, establish clear limits on the use of force by the police and to ensure that any use of force is proportionate and necessary. He further proposed that the Bill be amended to include specific provisions prohibiting the harassment, intimidation, or violence of individuals or groups exercising their right to assemble and to bring it into line with international human rights and that public awareness campaigns be conducted to inform citizens about their rights to assemble and demonstrate, and the potential implications of the Bill. He noted that the Bill imposes overly restrictive conditions on the notification and conduct of assemblies, grants excessive powers to the police, which could be abused and used to suppress dissent. He further noted that the Bill does not provide adequate protections for peaceful assembly and is inconsistent with international standards.
46. **Matt Muiruri** proposed that the Bill be rejected in its entirety noting that a protest is usually the last resort to any worker/citizen to voice out and bring to attention what is harmful to them. He submitted that the use of the term "maintenance of public order" is vague and prone to abuse and that enactment will lead to use of public funds due to imprisonment for illegal protest. He further submitted that the provisions on regulating officers are unclear and that the Bill presumes that protesters are violent and irrational.
47. **Ian Gichoya Macharia** proposed that the Bill be rejected in its entirety on the grounds of contravention of Article 37 of the Constitution. He submitted that the Bill introduces

- restrictions that could be used to limit the right to assemble and transforms the right into a privilege and that it lacks clarity in defining what constitutes peaceful demonstration and picketing. He noted that there was potential for misuse by law enforcement authorities, violation of International Human Rights Standards which Kenya is signatory to and that the Bill had a chilling effect on public participation and civic engagement.
48. **Hannah Wamuyu** proposed that amendment of the Public Order Act instead of replacing it for the reason that the Bill is a clawback on the rights entrenched under article 37.
49. **Kenya ICT Action Network (KICTANet) and Access Now** proposed the rejection of the entire Bill and instead amend the Public Order Act and the Penal Code to decriminalise participation in peaceful assemblies even where procedural requirements have not been met. They further proposed that introduction of administrative measures rather than criminal penalties and a clear definition of what constitutes threat to public order or safety. They proposed that the restriction of police powers should apply to disperse or prohibit assemblies only in the case of imminent danger as well as the introduction of mandatory guidelines for de-escalation and proportional use of force.
50. They noted The UN Human Rights Committee, in its General Comment No. 37, emphasises that restrictions on assemblies must be clearly defined, necessary, proportionate and subject to judicial review. They noted further that arbitrary restrictions undermine the core of the right to peaceful assembly and that participants in a peaceful assembly should not face criminal sanctions unless their conduct poses a genuine threat to public safety or order. They thus proposed that Parliament should adopt non-punitive, facilitative approaches rather than suppression of assemblies.
51. **Mizani 254** proposed the elimination of the discretionary authority of the police to unilaterally reject a protest and the abolishment of the Imposition of Conditions on protests and noted that all participants will collectively be held responsible for property damaged during protests. They further proposed that the restrictions on placards, banners and chants should be lifted and noted that there was need to reconsider the appointment of marshals.
52. They submitted that the bill does not clearly state the nature and extent of conditions authorities can impose and that law should ensure that only those directly responsible for such violent acts are held responsible. It was their view that overly broad restrictions could infringe on the freedom of speech protected under Article 33 of the Constitution. They submitted further that the bill places a heavy reliance on organizers and that responsibility for maintaining public order should rest with the state.
53. **David Olusi** proposed the rejection of the bill in its entirety on the grounds of violation of Constitutional rights. He submitted that imposing stringent rules and penalties on public demonstration will likely create a chilling effect of free speech and that it would have disproportionate impact on marginalized communities. He submitted further that the Bill is

contrary to international obligations including the ICCPR which Kenya is a signatory to. In his view, the Bill may lead to escalation of violence through restrictive laws, suppression of accountability and transparency, economic consequences since many social movements that rely on demonstrations advocate for economic justice and reforms and abuses by police experienced during the Gen-Z protest.

54. He thus proposed alternative solutions other than imposing restrictive laws and noted that public order can be maintained through existing laws and effective policing other than restrictive legislation. He submitted that blaming protests for isolated acts of violence unfairly punishes all demonstrations and that national security should not be used as blanket justification to curtail civil rights. He noted that the benefits of citizens freely expressing themselves freely outweighs short term economic costs and that isolated cases of misuse of demonstrations should not be used justify sweeping laws.
55. **Kericho Civil Society Network and Tunaweza Members** submitted that the bill ought to clarify that notification, not permission need be sufficient in line with international standards. He proposed that an individual should be held accountable for their actions during demonstrations, without overburdening organizers and that the Bill should offer more flexible guidelines considering both public interest and security concerns. They submitted that the Bill places significant responsibility on organizers. In their view, the role of enforcement in maintaining order during assemblies should also be emphasized and that blanket restriction on locations, especially around areas of significant public interest, could limit the impact of demonstrations.
56. **Kimaru Thagana** proposed the rejection of the entire Bill on the grounds that the limitation of the right under clause 6 is in contravention of Article 37 of the Constitution. He submitted that the requirement for provision of addresses by convenors poses a threat to privacy as well as the risk of being targeted, while a refusal for a notice to hold an assembly due to a different group holding demonstrations in the same place and time may lead to bias against anti-government protestors. He submitted further that Clause 11(a) is vague and opens room for interpretation and harassment as it does not give a threshold for what qualifies as “incitement of hatred”, and that liability for damage of property to the organizer creates an atmosphere of fear.

Committee Observations

57. The Committee observed that—
 - a. **Currently, assemblies and demonstrations are governed by section 5 and 6 of the Public Order Act, Cap. 5 which does not adequately address management of public order;**

- b. The High Court in *Ngunjiri Wambugu v Inspector General of Police, & 2 others* [2019] eKLR directed the Inspector General of Police, the Cabinet Secretary Ministry of Interior and National Coordination and the Hon. Attorney General to formulate and/or amend the requisite law and regulations to ensure that demonstrations are peaceful and held as per the Constitution including inter alia prescriptions for demarcation of demonstration zones, responsibilities for clean-up costs, maximum numbers, consents of persons/entities adjacent to demonstration zones with appropriate penalties when they go outside the expectations of the law and to formulate a Code of Conduct for convenors of demonstrations.

A. CLAUSE 2 - INTERPRETATION

58. **The Independent Policing Oversight Authority (IPOA)** submitted that Definitions in clause 2 of the bill are vague and overbroad and offend the doctrine of overbreadth. They submitted that there are many definitions left out including “public order”, “picketing and presentation of petitions”, “IPOA” and “public order”.
59. **The Law Society of Kenya** proposed the amendment of the definition of “Assembly” to mean *the intentional gathering of more than 15 people in a publicly accessible place for a common expressive purpose and includes planned and organised assemblies unplanned and spontaneous assemblies and static moving assemblies*. They noted that defining the number of participants needed to constitute an assembly or demonstration reduces ambiguity, ensures consistent application and enforcement of the law and provides effective management of different sizes of gatherings.
60. They further proposed the definition of the term “Demonstration” to mean *an act by one or more persons but not more than 15 persons associated under common objectives parading along or displaying their will or vigorous determination in public places available for free movement of the general public such as roads and parks with the aim of exerting influence on the opinions of a large number of unspecified persons or overwhelming them*. They submitted that this would be in alignment with international standards, where many countries have a threshold for what constitutes an assembly or demonstration.
61. **Kenya National Human Rights Commission (KNCHR)** proposed amendments to the definitions to recognise online assemblies and petitions, noting that the Bill only protects assemblies in physical places and yet with the evolution of the digital space, more and more assemblies and petitions are being carried out online. They noted that remote participation in assemblies should be protected in line with regional and global practices/guidelines. They further proposed the addition of a proviso to the definition of “peaceful” that states that the fact that an assembly may “annoy or offend individuals or groups” should not be grounds for restricting it, as long as the conduct remains non-violent and that isolated acts of violence do not render an assembly as a whole non-peaceful. This they submitted would be in line with the Guidelines on Freedom of Association and Assembly of the African

Commission on Human and Peoples' Rights (African Commission) and with the Joint declaration on protecting the right to freedom of peaceful assembly in times of emergencies that inter alia provides: "*The peacefulness of an assembly must be presumed; isolated violent acts do not render an assembly as a whole unpeaceful or unlawful*".

62. **The Kenya Conference of Catholic Bishops** proposed the insertion of a new definition for "Spontaneous Assemblies or demonstrations" to mean *the gathering of a number of people in a publicly accessible place for a common expressive purpose without prior planning or organization as a response to immediate issues or events*. They noted that there is no broader definition of what spontaneous assemblies are.
63. **Transparency International** proposed that the Bill provide a distinction between planned events and incidents of spontaneous public disorder in its definition. They submitted that the interpretation fails to consider and distinguish planned events and incidents of spontaneous public disorder which are also recognized under the Constitution and protected under international law.
64. They proposed a revision of the definition to specify that "assembly notice" means *a notice of intention to hold a planned public assembly, demonstration, picketing, and presentation of petitions to public authorities*. They submitted that the Bill fails to make consideration for spontaneous assemblies which are recognized under the Constitution and also protected under international law. They further proposed that the provision/ proposed interpretation of the word "peaceful" be done away with noting that the word is defined in the negative and in a manner to negate the actual definition of the word "peaceful" and as such, it imputes that assemblies are bound to be non-peaceful which is unjustified. They noted further that the interpretation disregards the right to free speech and article 37 of the Constitution which allows for peaceful assembly. As such, it is contrary to article 24(2)(b) and (c) of the Constitution.
65. They further proposed the alignment of the definition of "public gathering" with that in the Public Order Act, for the reason that variance between legal definitions of the same words is bound to cause confusion in application.
66. **Kiambu Justice and Information Network (KIJIN)** proposed the addition of the word 'or her' immediately after the pronoun 'his' for gender equality and neutrality. They proposed to replace the word "organizing" with a different word noting that the word organizing had been used to define to define "organizer". They further proposed replacement of 'Roads Act' with 'Public Roads and Roads Access Act' for the reason that the Roads Act is a non-existent Act and the adoption of the definition under Section 2(a) of the Public Roads and Roads Access Act.
67. They further proposed deletion of paragraph (d) on the definition of "public place due to a typing error and additional paragraph (e) to include 'any public authority', noting that the

provisions are silent on carrying out protests, picketing, demonstrations or presenting petitions to public authorities. They proposed that the Bill align the definition of public gatherings with that of the Public Order Act which defines a “public gathering” to mean a public meeting, a public procession, and any other meeting, gathering or concourse of ten or more persons in any public place for the reason that variance between legal definitions of the same words is bound to cause confusion in application.

68. **Police Reforms Working Group- Kenya** proposed amendment to the definition of assembly, to *‘Intentional gathering of more than 100 number of people in a publicly accessible place for common expressive purpose’* noting that the clear designation of people will curb retaliatory attacks on targeted persons and arbitrary arrests. They further proposed to add the definition of free speech, demonstration, gathering, protests, procession, assembly. Free speech to mean *“the right of a person to articulate opinions and ideas without interference or retaliation from the Government.”*, *demonstration to mean “an act of a person group...assembly of persons organized to engage in free speech or activity, e.g protest...intended to attract attention/precipitate change”* and *gathering to mean “any assembly, concourse or procession of more than 15 persons in or on any public road as defined in the Road Traffic Act, or any other public place or premises wholly or partly open to”*. They noted that, internationally, the guiding definition of assembly refers to an act of intentionally gathering, in private or in public, for an expressive purpose and for extended duration and the right to assembly may be exercised in a number of ways including by demonstrating, protesting, meetings, processions, rallies, sit- ins, and funerals, through use of online platforms, or any other way people choose.
69. They proposed that the Bill redefine “peaceful” to include all actions that do not lead to physical harm and destruction of property, noting that the provided definition is too broad and allows room for dispersing peaceful assemblies. They further proposed the deletion of the definition of “police” and alternatively replace it with “police” means anyone assigned by the Inspector General to undertake public order management duties. They noted that assigning the responsibility of managing public order to a subordinate of the National Police Service enables many officers to circumvent standard reporting mechanisms, investigations and prosecution in cases of property damages/fatalities.
70. They also proposed the deletion of the word ‘indirectly’ in the definition of riot damage and its replacement it with *“any loss suffered as a result of an injury to or death of any person, or any damage destruction of any property, caused directly and during, the holding of a gathering”*. They noted that the provided definition is too broad, giving the Kenya Police the discretion to link any unrelated event occurring before or after an assembly directly to the assembly. Lastly, they proposed the addition of the words *‘with the status of a subcounty commandant’* in the definition of a regulating officer for the reason that assemblies, such as processions, often traverse multiple sub- counties, necessitating a higher-ranking regulatory officer to oversee and ensure seamless transitions across these jurisdictions.

71. **Nabwire Obare Advocates** proposed the insertion of the words “any officer instructed by the Inspector general to manage public order” in the definition of Police for the reason that Kenya’s history during public order management shows that other departments within the Ministry of Interior, like Kenya Prison Service, can be called in to help manage public order.
72. **Article 19 Eastern Africa** proposed an amendment to the definition of demonstration to delete ‘vigorous determination’ and consider replacing it with “opinion” OR rephrase it and state “or displaying their will or free speech in public places. They noted that the aspect of vigorous determination is relative based on the person making the decision.
73. They further proposed an **amendment** in the definition of Marshals, to delete the words ‘control the participants” and “take steps to ensure that the assembly proceeds peacefully’, because the marshal role should not overtake the roles of the police in protests. They also proposed an amendment to the definition of “peaceful” to delete ‘annoy or give offence to individuals or groups opposed to the ideas or claims that the assembly is seeking to promote’ noting that this creates a subjective bias based on individual emotions and not based on a law or statute.
74. They proposed the addition of a proviso to the definition of “peaceful” that states *that an assembly may “annoy or offend individuals or groups”* should not be grounds for restricting it, as long as the general conduct of protestors remains non-violent. Thus, is to align with the guidelines on Freedom of association and Assembly of the African Commission on Human and Peoples’ Rights (African Commission). They noted that Joint Declaration on Protecting the Right to Freedom of Peaceful Assembly in times of emergencies proves that the peacefulness of an assembly must be presumed, isolated violent acts do not render an assembly as a whole unpeaceful or unlawful.
75. They also proposed the deletion of the specific number given in the definition of public gathering for the reason that numbers are not relevant to the right being advocated for. A demonstration can be done by one person if they can communicate their concerns.
76. They proposed deletion of the word ‘Indirectly, immediately before or after’ in the interpretation of riot damage for the reason that its use can be misused by other actors and the protestors will be blamed. Lastly, they proposed an amendment to the definition of a regulating officer ‘*to be the sub county commander where the demonstrations or process will take place*’ for the reason that the role should move from individual police stations to the county or sub county police officers.
77. **WeCare Community-Based Organization** proposed that the definition of demonstration be refined to ensure alignment with constitutional guarantees and legal regulations for the reason that the revised definition acknowledges the peaceful and unarmed nature of demonstrations, incorporates with the need to adhere to legal requirements such as permits

and notifications. They noted that the definition of “demonstration” should maintain the emphasis on public display and influence and aim to balance the freedom to demonstrate with the need to maintain public order.

78. **The National Police Service Commission** proposed amendment of the definition of the term ‘peaceful’ noting that the current provision is too broad and may be misinterpreted to include legal activities such as religious gatherings. They proposed to amend the definition of the term “public gathering” by substituting 100 persons with 2 or more persons for the reason that limiting a public gathering to 100 persons creates a loophole on the number of persons that are subject to the provisions of the statute. Lastly, they proposed amendment to the definition of the term police, to accord the definition with provisions of Article 243 of the Constitution and Section 2 of the National Police Service Act.
79. The **National Police Service** proposed an amendment to Clause 2 to include the definition of “excluded meetings”. They proposed the deletion of the word police and replacement with police officer to adopt the definition of the National Police Service Act. They further proposed that the Bill define Cabinet Secretary to mean ‘*the Cabinet Secretary for the time being responsible for national security*’ and to define the term “offensive weapon”. They also proposed the deletion of the number ‘100’ immediately before the word ‘more than’ and replace it with ‘10’, to retain the current definition of public gathering to mean a gathering of more than 10 persons and to insert the definition of the term “restricted area”.

Committee Observations

80. The Committee observed that—

- a. **The definitions in the Bill are too broad particularly—**
 - i. **The definition of the term “assembly” does not specify the number of people required to form an assembly while the threshold of one hundred people set in the definition of the term “public gathering” is unreasonably high;**
 - ii. **the definition of the term ‘peaceful’ is too broad and may be misinterpreted to include legal activities such as religious gatherings;**
 - iii. **the definition of the term “assembly” to include spontaneous assemblies contradicts the provisions of section 7 which require convenors to give a notice of at least three days;**
- b. **The definition of the terms does not cater for single person protests, and demonstrations and assemblies held online;**
- c. **The Bill does not define key terms used in the Bill including “public safety and public order” making it subject to arbitrary interpretation**
- d. **The employment of other departments within the Ministry of Interior, like Kenya Prison Service, to help manage public order is made as an extension of the Kenya Police Service and it is the Kenya Police Service who are in charge of management of public order.**

B. CLAUSE 3 - OBJECTS AND PURPOSE OF THE ACT

81. **IPOA** submitted that clause 3(b) provides for a blanket opportunity for the right to assemble to be infringed upon for lack of appropriateness and that use of public order as a justification to deny rights to demonstrators must be defined in consistency with Article 37. IPOA was of the view that Clause 3(b) and (c) offend Articles 19(1) and (2), and 37 of the Constitution, Article 20 of UDHR and Article 21 of ICCPR and Article 11 of the ACHRPR and that the requirement for application to hold an assembly does not consider spontaneous assemblies thus making spontaneous demonstrations illegal.
82. **Police Reforms Working Group- Kenya** proposed the deletion of clause 3(d) for the reason that the current legal framework on the freedom to protest does not mandate any payments.
83. **Article 19 Eastern Africa** proposed that the terms “public order” and “public safety” under sub clause (c) be defined because they have the potential to be abused by law enforcement in the form of fees, charges, or other amounts.

Committee Observation

84. The Committee observed that—

- a. **the recognition of the right of peaceful assembly in the Bill conforms with Article 37 of the Constitution and Article 21 of the International Covenant on Civil and Political Rights to which Kenya is a signatory.**

C. CLAUSE 4 - APPLICATION

85. **Transparency International** proposed the deletion of Clause 4 on the grounds that the relation between the limitation and its purpose has not been established, as required under article 24(1) (e) of the Constitution. They noted further that the provision is an attempt to negate the constitutionally guaranteed right under article 37; with no clear purpose.
86. **Police Reforms Working Group- Kenya** proposed the deletion of clause 4(a) and (b) noting that public Order Management should be for both the public and officers as well.

Committee Observations

87. The Committee observed that—

- a. **The clause places additional conditions on the right to peaceful assembly by including “enjoyment of the natural environment” and “carrying on business” which conditions are not contemplated under Article 37 of the Constitution whose only conditions for an assembly or demonstration are being peaceful and unarmed.**

D. CLAUSE 5 - COMMON LAW OF TRESSPASS

88. **Police Reforms Working Group- Kenya** proposed the deletion of Clause 5 for the reason that existing measures, such as the requirement for notices and the presence of marshals already provide safeguards to manage all forms of assemblies effectively. These guidelines are sufficient and therefore no need for additional trespass regulations.
89. **Article 19 Eastern Africa** proposed the deletion of clause 5 for the reason that the law of trespass can affect persons who had legal access but are now deemed as trespassers because of the protest and is therefore unnecessary.

Committee observation

90. The Committee observed that—

- a. **The clause may be used to suppress assemblies and demonstrations particularly in private premises ordinarily open to or used by the public and which are defined as “public place” under clause 2 of the Bill.**

E. CLAUSE 6 - LIMITATION OF THE RIGHT TO PEACEFUL ASSEMBLY AND DEMONSTRATION

91. **IPOA** submitted that Clause 6 offends Articles 19(1) and (2), and 37 of the Constitution, Article 20 of Universal Declaration of Human Rights and Article 21 of International Convention on Civil and Political Rights and Article 11 of the African Charter on Human and Peoples' Rights (ACHPR) and that the requirement for application to hold an assembly does not consider spontaneous assemblies thus making spontaneous demonstrations illegal.
92. **The Law Society of Kenya** proposed the deletion of sub clause 6(2) on the grounds that it waters down Constitutional protections for the limitation of the right to freedom of assembly by banning the right to assemble and demonstrate where the assembly may affect public safety, public order or the protection of rights and freedoms of other persons. They submitted that the proposal is inconsistent with the Constitutional standard for the limitation of fundamental rights and freedoms under Article 24 of the Constitution.
93. **The Kenya National Human Rights Commission (KNCHR)** proposed strengthening the provisions of clause 6(2) by adding provisions to clearly delineate the interpretation and use of limitations on grounds of public safety, public order and the protection of the rights and fundamental freedoms of other persons and to include a provision that provides guidelines on these three limitations.

94. In the Alternative, they proposed the addition of a clear proviso that expressly stipulates that in interpreting and application of these limitations, the regulating authority shall favour the enjoyment of the freedom of assembly to the greatest extent possible. They noted that the limitations on grounds of public safety, public order and the protection of the rights and fundamental freedoms of other persons are justifiable reasons to limit rights and they align with regional and international standards. Nonetheless, they submitted that the limitations as put thereof are overly broad and subject to abuse and that organizers and participants intending to hold a peaceful assembly or demonstration may still be limited under the guise of public law and order grounds.
95. **Katiba Institute** proposed the deletion of Clause 6(2), or an amendment listing procedural requirements in exercising the right in the listed situations but not wholly denying the exercise of the right and an amendment removing the vague terms but listing down easily understood situations or descriptions of those situations. They noted that the use of the words “may not be exercised, suggesting that the right to demonstrate cannot be enjoyed in those three circumstances which violates article 24 (2)(c).
96. **Transparency International** proposed the deletion of Clause 6(2) on the grounds that the relation between the limitation and its purpose has not been established, as required under article 24(1) (e) of the Constitution. They noted further that peaceful assemblies have a fundamental expressive element which is protected under Article 33 and that in relation to article 36, the activities of associations, including the organization of protests, are also protected.
97. **Police Reforms Working Group- Kenya** proposed the deletion of Clause 6 and proposed that the bill should include a single, general limitation clause as in Article 24 of the Constitution of Kenya, 2010 to allow the nuances of a specific assembly and the scope of rights to be worked out by the courts where need be.
98. **Kiambu Justice and Information Network (KIJIN)** proposed that the provisions of clause 6(2) be strengthened by adding an additional sub clause(c) to read ‘*or any other limitation as contemplated under Article 24 of the Constitution of Kenya*, in order to widen the scope of grounds for limiting a right and for conformity with the Constitution. They also proposed an addition of sub clause (d) to Clause 6(2 to) read ‘or during a state of emergency’ for the reason that a right may be limited during a state of emergency as contemplated by the Constitution.
99. **Kenya Civil Society Organisations** proposed the deletion of Clause 6(1) and (2) for the reason that it provides implementing officials with wide discretionary powers that are not adequately addressed. It breaches the doctrine of over breadth.

Committee Observations

100. The Committee Observed that—

- a. the limitation on the right to assemble, demonstrate, picket and present petitions on the basis of public safety, public order and the protection of the rights and freedoms of other persons is overly broad and does not specifically express the intention to limit the right and the nature and extent of limitation as required by Article 24(2)(a); and
- b. the clause places additional conditions on the right to peaceful assembly by including “enjoyment of the natural environment” and “carrying on business” which conditions are not contemplated under Article 37 of the Constitution whose only conditions for an assembly or demonstration are being peaceful and unarmed.

F. CLAUSE 7 - APPLICATION TO HOLD AN ASSEMBLY OR DEMONSTRATION

101. **IPOA** submitted that limitation of rights under clause 7 is inconsistent with Article 24(1) of the Constitution as it completely takes away the right under Article 37. They submitted that clause 7 gives huge discretion to the regulating officer on the enjoyment of the right.
102. **Salma Khamala** proposed the deletion of section 7(3) (b) and (d) to remove the requirement for the notice of an assembly to contain the names and details of marshals and the requirement for the proposed site and route of assembly on the grounds that it is an unreasonable demand on the marshals who are not in the business of maintaining law and order, and which is a responsibility of the police under section 24 of the National Police Service Act.
103. She proposed the deletion of Clause 7(4), (5) and (6) on not holding assembly due to another notice of assembly on same date, time and venue on the grounds that the right to assemble or demonstrate may be triggered by different reasons at the same time and should not be a reason for limiting assemblies. She noted that the right under Article 37 is not granted but an inherent right. She further proposed the deletion of Clause 7(7) on requirement of the organiser to be present at all times during the assembly noting that the provision of peace and order is a role of the Police not the organiser. She also proposed amending Clause 7(8) to require police to seek court order to rely on Clause 7(8) to stop or prevent an assembly that is non-compliant with clause 7 noting that the power to prevent the holding an assembly by the regulating officer is prone to abuse.
104. **Hannah Wamuyu** proposed the deletion of clause 7(3) on the ground that providing physical addresses for organisers provides an opportunity for abductions and illegal detentions.

105. **Kiambu Justice and Information Network (KIJIN)** proposed amending sub clause 7(2) to reduce time of notification from 3 days to within 24 hours or during working days on the grounds that the set 3-day mandatory notice period may delay the exercise of a right in cases where it must be exercised with urgency and expediency. She further proposed changing the word 'shall' to 'may' and addition of the words 'of a letter, email, memo, or publication or other prescribed form' to allow members of the public to present a notice in any comprehensible form.
106. **Nabwire Obara Advocates** proposed the deletion of Clause 7(1-6) noting that the notification under clause 7 requires notices to be issued physically and thus fails to utilize current technology of filling out forms. They further proposed that the notification period be reduced from 72 hours to 48 hours and noted that the clause does not cater to spontaneous or small gatherings that do not cause disturbances.
107. **Article 19 Eastern Africa** proposed that notice period be reduced from 'three days' to two days or 48 hours as per international standards. They proposed further that Clause 7(4) be amended to conclude with "*held at an alternative venue or be held on such future date as the organizer may notify*" so that the Regulating officer has the obligation to consider an alternative location for the demonstration to take place instead of postponing it.
108. They also proposed the amendment of clause 7(4) to add "*and shall be delivered through a digital system/email*" to implement a digital system with a centralized online portal where organizers can submit notifications and submit responses. They proposed the deletion of clause 7(7) noting that it should not be a legal requirement for the organizer to be there and that where necessary information and instructions have been shared with the participants, everyone should be held accountable for their own actions. They further proposed that Clauses 7 (8)(9) be deleted for the reasons that provisions of offences and penalties need to be consistent with the existing laws and that there is no clarification as to the consequences of the offence. They further proposed that the Bill be amended to adopt the penal code definition of assembly and riot as well as the punishment for unlawful assembly. They noted that the criminal offences in the Bill are not necessary as they target individuals exercising their rights and not people who actually commit crimes.
109. They further proposed the amendment of Clause 7(8) to have the police officer role assigned to a senior police officer. They proposed that the Regulating officer to be the sub county commander of where the demonstrations or procession will take place, noting that the decision and responsibility to limit human rights should be undertaken by a senior command officer. They further proposed that the heading to clause 7 be rephrased to "Notification to hold assembly or Demonstration" for the reason that a notification should be confused with an application since it is information for purposes of the police. They further proposed that the notice period be reduced to "at least two days" before the proposed assembly which is the standard set by the African Commission on Human Rights.

110. **The Police Reforms Working Group -Kenya** proposed the deletion of Clause 7(1) as it places further unnecessary limitations on assemblies. They further proposed amendment of Clause 7(5) to add “...and shall be delivered through a digital system/email” as a form of adopting to various formats of service to ensure efficient and transparent communication and implementing a Digital Notification System with a centralized online portal.
111. **Kenya ICT Action Network (KICTANet) & Access Now** proposed amendments to provide for notification systems for peaceful assemblies where organisers simply inform authorities in advance to help facilitate the event and protect public safety, noting that notification requirement has been historically misused to deny assemblies creating a permission regime and that overly broad discretion given to police increase the risk of abuse. They noted further that under UN Human Rights Committee's general comment No. 37 on Article 21 of the ICCPR, notification requirement should not amount to request for permission. They submitted further that notification system should be simple and transparent, not bureaucratic and free of charge, lack of notification should not make assembly unlawful or justify dispersal, arrest or penalties, spontaneous and low impact assemblies should not require notification or be automatically disbanded and any restrictions should be communicated promptly to allow for legal challenge for the reason that authorities must facilitate assemblies unless there's a genuine threat to public order.
112. On the creation of the offence under Clause 7(10), they proposed that it should clearly define what constitutes an “unlawful assembly” to avoid vague interpretation that can be used arbitrarily against peaceful protestors. They noted that blanket restrictions on freedom of assembly are disproportionate as restrictions do not align with exemptions on limitation of rights and fundamental freedoms under Article 24(2) of the Constitution. They further submitted that this provision will create a chilling effect on people's ability to engage in peaceful assemblies which includes activities such as crowdfunding, use of social media for mobilisation and use of online spaces as places of assembly to strategize on organising protests.
113. **The Kenya National Commission on Human Rights (KNCHR)** submitted that the provisions on the notification regime under clause 7 (1)-(6) need to be strengthened by including additional procedural safeguards, such as written notification of any decisions to restrict or prohibit an assembly with clear reasons, as well as the availability of expedited judicial review. They proposed that provisions should provide that no notification need be submitted for small assemblies, assemblies unlikely to generate disturbance or spontaneous assemblies. They further noted that it ought to be clear that the notification is not a request for permission and that the good practice and that a prior notification should only be required where its purpose is to enable the State to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.

114. KNHCR further proposed the deletion of Clause 7(7) requiring the presence of the organiser for the reason that the State bears the primary duty to facilitate and maintain peace and order at an assembly or demonstration and organizers should not be obligated to assist the police in carrying out their primary duty. They submitted that the Special Mandate on Freedom of Peaceful Assembly has adopted the expert opinion that, "assembly organizers and participants should not be considered responsible (or held liable) for the unlawful conduct of others... (and together with) assembly stewards, should not be made responsible for the maintenance of public order."
115. **The Kenya Conference of Catholic Bishops** proposed that the assembly or demonstration should be allowed to proceed once the notice has been availed and that the Notice period be shortened to forty-eight hours, noting that the regulation of assemblies should not be mistaken as asking for permission given that the sole and main purpose of the notification to the law enforcement is for them to aid the right to assemble.
116. They further proposed amendment of Clause 7(7) to strictly indicate that only law enforcement maintains law and order. They submitted that this provision would infringe on the right to peacefully assemble and demonstrate due to the risks that will be associated with liability of actions done by others and that criminal punishment to a civil law is not proportionate.
117. They further proposed the amendment of clause 7(8) on the order of dispersing the assembly or demonstration and proposed to have the police identifying and removing the rogue individuals with evidence from the assembly or demonstration for the reason that peaceful participants in assemblies and demonstrations should not be dispersed entirely due to the actions of a few miscreants and police should actively and objectively ensure that the protestors are safe from rogue participants. They proposed the removal of all criminal sanctions under clause 7(10) and replacement with civil penalty that fits the disobedience (if any)
118. **Katiba Institute** proposed the deletion of the requirement under clause 7(7) that the organiser of an assembly or demonstration be present throughout the assembly or demonstration to assist the police in the maintenance of peace and order at the assembly or demonstration on the grounds that constitutional principle that constitutional rights conferred without express limitation should not be cut down by reading implicit restrictions into them. They noted that Article 37 does not impose any obligation on a rights holder other than being peaceful and unarmed and that it is the sole responsibility of the state to maintain peace and order.
119. They further proposed the removal of the criminal sanctions under Clause 7(9) and (10) or amendment to ensure that the magistrate has discretion and reduction of the penalties. They submitted that the provision removes the magistrate's discretion by fixing the sentence to

one year, the restriction is not proportional and has a chilling effect on the right noting that Article 24 requires the state to adopt the least restrictive measure when limiting a right.

120. **Transparency International** proposed addition of guidance on the nature of the requirement of notice, that the notice is not a request for permission but a means to enable the police to prepare to facilitate and protect an assembly effectively. They submitted that this clause grants unchecked excessive powers to the regulating officer/ the police to limit and prevent exercise of the right under article 37 and that no corresponding duties and responsibilities have been assigned to the police, to do as much as they can to encourage exercise of the right.
121. They further proposed the deletion of Clause 7(3)(b) noting that the requirement for marshals is placing an unreasonable obligation on organizers, contrary to articles 37 and 24(1) of the Constitution, which is an unreasonable and unjustifiable limitation to exercise of the right. They proposed the inclusion of a provision in the Bill, that the regulating officer should respond to a notice from an organizer within a reasonable amount of time and at least 24 hours, giving adequate reasons for a decision that it is not possible to hold the proposed assembly or demonstration; to promote timely, prompt and efficient communication by the police upon receiving notification of an activity towards exercise of article 37.
122. **The Law Society of Kenya** proposed amendment of Clause 7(1) to read "*A person shall hold an assembly or demonstration in accordance with the provisions of this section*" for the reason that the provision already restricts the assembly or demonstration without due regard to constitutional requirements. They further proposed the Reduction of the timeline in Clause 7(2) to 2 days noting that the 3-day timeline is contrary to regional best practice set by the African Commission on Human and Peoples' Rights for notice periods to be as short as possible, and ideally no more than 48 hours.
123. The Law Society further proposed the addition of a new paragraph stating that if notice is given later than two days before the date on which the gathering is to be held, the reason why it was not given timeously should be given. They contended that by allowing for an explanation, the requirement acknowledges that legitimate reasons may exist for not meeting the notice deadline thus offering flexibility while still maintaining regulatory standards.
124. They also proposed amending Clause 7(3) by deleting the requirement for physical address of the organizer and the marshals which they submitted is prone to abuse by law enforcement agencies and can be used to gag dissents through different forms of human rights violations. They further proposed that the regulating officer should give a response under Clause 7(4) to the notice within 24 hours upon receipt of the application to hold assembly or demonstration and if a convener has not been given a response in terms of the notice within 24 hours after giving the notice, the assembly or demonstration may take place in accordance with the contents of the notice. This is to encourage prompt responses, uphold the

fundamental right to free assembly and align with principles of administrative fairness and transparency.

125. They also proposed amendment of Clause 7(5) to require the notice be sent via email to the organizer to safeguard the rights of the organizer and security. They proposed deletion of Clause 7(7) noting that it is a dereliction of public duty for the police to transfer their constitutional duties and functions to maintain peace and order at assemblies to organizers or any other private citizens and that the imposition of this duty to maintain peace and order on private citizens is unlawful. They proposed amendment of Clause 7(10) by deleting the penalty under Chapter XI of the Penal Code and substituting it with a green justice penalty like community work, noting that no peaceful assembly or demonstration is prima facie unlawful but regulated.
126. **Kenya Civil Society Organisations** proposed amendment of Clause 7(3)(a) and (b) be to exclude the organizers from providing personal details such as their residential addresses which they submitted is a breach to one's right to privacy. They proposed deletion of Clause 7(10) for the reason that the imposition of criminal liability on protestors contrary to Article 37 of the Constitution. They noted that there is extensive discretion given to the law enforcers to allow or deny demonstration, the penalty set is contrary to Article 24(1)(e) and that the Bill instigates intrinsic censures to Kenyans as many Kenyans will fear facing the penalties.
127. **WeCare Community-Based Organization** proposed that Clause 7(2) be amended to accommodate the practical need of protest organizers noting that the requirement to notify the regulating officer between three and fourteen days may constrain the ability of the individuals and groups to respond to urgent issues. They further proposed alternative methods for verifying organizer identity without compromising privacy could be considered noting that requiring the full names and physical addresses of the organizers and marshals may raise privacy concerns and create barriers for individuals who wish to organize protests but are concerned about their safety or privacy. They also proposed flexibility in updating or modifying the site or route within certain parameters while still maintaining communications with authorities. They submitted that the requirement to specify the exact site, while aimed at ensuring public safety and order, may place a significant burden on organizers. They proposed that the notification should be streamlined to ensure that it is not used as a tool to suppress or unduly control peaceful assembly noting that the level of detail required in the notification process should be balanced against the need to protect the rights of individuals to assemble and demonstrate.
128. The **National Police Service Commission** proposed that the Bill should make provision criteria for restricting assembly and demonstration which must be specific, clear and lawful. They proposed amendment of clause 7(2) to reduce the notice period to 2 days noting that a short notification period allows for quicker responses to events balancing spontaneity with

order. The further proposed amending Clause 7(8)(b) to restrict use of excessive powers particularly when dispersing assembly or demonstration and to allow for oversight accountability and clear guidelines on use of force.

129. The Commission proposed amending clause 7(9) to provide for personal liability in cases where loss and damage to property arise from acts of violence and vandalism during demonstrations and assembly, to ensure accountability by persons involved in demonstrations and assembly while protecting the rights of peaceful participants. They also proposed amendment of Clause 7(10) to reduce imprisonment to a maximum period of one month and prioritize fines noting that a shorter sentence period avoids over penalizing minor infractions rather than criminalizing infractions.
130. **Tribeless Youth** proposed the deletion of clause 7(1) and (2) which they submitted grants much regulatory control to the regulating officer which can potentially be misused to limit and suppress assemblies. They further proposed deletion of Clause 7(3) which they noted raises major data privacy concerns for the persons involved under data protection Act. They noted that the requirement for regulating officer to notify organizer in writing at physical address under Clause 7(4) and (5) poses security risks and that the need to reschedule under Clause 7(8) may result in loss of momentum or relevance. They noted further that the provision of Public registers under Clause 7(13) could include sensitive details about organizers exposes them to harassment.

Committee Observations

131. The Committee observed that—

- a. **The requirement for organisers to be present at all times during the protest places unreasonable expectations on the organisers, who not charged with the responsibility of maintaining law and order. Maintenance of law and order is the responsibility of the police under section 24 of the National Police Service Act.**
- b. **The Bill fails to cater for protests within the digital space, single person protests and effectively prohibits spontaneous events by failing to cater for them and by making a notice of an assembly a mandatory requirement for holding an assembly.**
- c. **The notification regime fails to meet the international standard for notification of assemblies under Guidelines on Freedom of Association and Assembly in Africa 2017 which recommends that—**
 - i. **participating in and organizing assemblies is a right and not a privilege, and thus its exercise does not require the authorization of the state;**
 - ii. **a notification regime shall not stipulate that notifications be required too far**
 - iii. **in advance; rather, any notice period shall be as short as possible, preferably forty-eight hours;**

- iv. a failure to respond by the authorities shall be taken as acknowledgement that the assembly may go ahead along the lines proposed:
- v. should the authorities receive notification from multiple groups aimed at holding assemblies in the same space at the same time, efforts shall be made to facilitate multiple concurrent assemblies. Where this is impossible, an impartial and reasonable means shall be found to allocate the space.
- vi. No notification need be submitted for small assemblies, assemblies unlikely to generate disturbance or spontaneous assemblies.

G. CLAUSE 8- CONDITIONS FOR CONDUCT OF ASSEMBLY OR DEMONSTRATION

132. **IPOA** submitted that clause 8 on cleaning up costs is a prohibitive financial condition for demonstrations and offends international best practices and that clause 9 of the Bill limits the right under Article 37.
133. **Hannah Wamuyu** proposed that there was need to review the power by regulating officers to give conditions relating to clean up on the grounds that an organiser of an assembly does not have the power to control any mobs that may join the procession.
134. **The Kiambu Justice and Information Network** proposed the deletion of clause 8(1)(b) and substituting it with '*cleaning up the place of holding the assembly, or demonstration*' on the grounds that there is no framework to receive monies intended to clean up places for holding demonstration or assembly.
135. **Kenya ICT Action Network (KICTANet) and Access Now** proposed that the Bill be amended to limit imposition of conditions only on those that are strictly necessary to public safety, order or the rights of others. They further proposed the removal of any financial obligation on organiser unless directly related to damages caused by unlawful acts proven in court. They observed that imposing financial burdens on organisers could deter participation and penalise individuals for exercising their Constitutional right while vague conditions such as maintenance of public order can be used to impose restrictive measures that infringe on the freedom of assembly. They noted that the Special Rapporteur on the right to freedom of peaceful assembly and Association has emphasized that financial conditions should not be used as a deterrent to the right to assemble and that conditions imposed on assemblies must be necessary and proportionate.
136. **Kenya National Commission on Human Rights (KNCHR)** proposed strengthening the provisions of clause 8(2)(a) by adding provisions to clearly delineate the interpretation and use of limitations on grounds of public safety, public order and the protection of the rights and fundamental freedoms of other persons. They proposed the inclusion of a provision that provides guidelines on the three limitations. Alternatively, they proposed adding a clear proviso that expressly stipulates that in interpreting and application of these limitations, the

regulating authority shall favour the enjoyment of the freedom of assembly to the greatest extent possible. They noted that the limitations on ground of public safety, public order and the protection of the rights and fundamental freedoms of other persons are justifiable reasons to limit rights and they align with regional and international standards. They observed that the limitations as put thereof are overly broad and subject to abuse and that organizers and participants intending to hold a peaceful assembly or demonstration may still be limited under the guise of public law and order grounds.

137. They also proposed the deletion of Clause 8(2)(b) on the ground that the requirement is onerous and unreasonable. They noted that the Bill has not expressed how the cost is to be assessed and there is a greater risk of abuse by leaving this to the discretion of the authorities-particularly the regulating officer-to specify such payment conditions.
138. **The National Police Service Commission** proposed the amendment of Clause 8 to ensure that there is a balance between public order and individual freedom.
139. **Kenya Conference of Catholic Bishops** proposed that the regulating officer to give reasonable and objective justifications of the conditions. They noted that this clause gives the regulating officer unnecessary powers without checks and may fail the objectivity test. They also proposed deletion of clause 8 (2) (b), (c) and (d) for the reason that conditions set out in sections 8 (2) (b), (c) and (d) targets the organizer and sets conditions which cannot be met when a public protest is taking place.
140. **Katiba Institute** proposed the deletion of Clause 8 noting that the unlimited powers of the Regulating Officer offend Article 10 of the Constitution. They noted further that the imposition of the condition of cleaning up costs implicitly imposes obligations on the right holder that are not in the Constitution.
141. **The Law society of Kenya** proposed the deletion of Clause 8 (2) (b) for the reason that it creates a chilling effect on the right to assembly and demonstration. They noted that adding the cost of cleanup as a condition could disproportionately affect grassroots organizations or smaller groups that may lack the financial means to cover such expenses. They submitted that it is generally the responsibility of the authorities to maintain and clean public areas. They also proposed deletion of Clause 8(2)(c) which they submitted allows the police broad discretion to arbitrarily determine the places that are open to citizens to exercise their rights to assemble and demonstrate. They observed that the right to freedom of peaceful assembly encompasses the right to choose a venue, time and purpose of assembly.
142. **Kenya Civil Society Organisations** proposed the deletion of Clause 8(1) in its entirety on the grounds that it paves way for abuse of discretionary powers of the regulating officer and for further restrictions of the right to assemble. They also proposed amendment of Clause 8(2)(b) to ensure that cleaning up is done by the state. They observed that the Human Rights

Council held that the requirement for protestors to bear the clean-up cost is contrary to Article 21 of the International Covenant on Civil and Political Rights. Further, the 'Joint report of the special rapporteur on the rights to freedom of peaceful assembly and of association and the special rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 2016' by the United Nations Office of the High Commissioner for Human Rights states that states must facilitate protests, and this obligation includes the provision of basic services, such as traffic management, medical assistance and clean-up services.

143. **Police Reforms Working Group- Kenya** proposed the deletion of Clause 8(1) on the grounds that granting a regulating officer the power to set conditions before a protest could suppress specific groups or viewpoints, discourage public participation and create a chilling effect on protests which undermines the principle of equality before the law.
144. **Nabwire Obara Advocates**. Proposed the deletion of Clause 8(2)(b) on the grounds that charging any kind of fee to protest is just a way for the state to demand payment for exercising fundamental human rights and a way of intimidating protestors by creating financial barriers.
145. **Article 19 Eastern Africa** proposed the deletion of Clause 8(1) and (2) noting that terms such as 'public order', 'public safety', 'inherent environmental or cultural sensitivity', 'resource management practice of a delicate nature' are general terms that are open to misinterpretation and abuse by law enforcement. They submitted that the Bill has not expressed the cost to be assessed and hence there is a greater risk of abuse by leaving this to the discretion of the authorities. They submitted further that such costs should be catered for by the state as provided in the Guidelines on Freedom of Peaceful Assembly.
146. **Police Reforms Working Group- Kenya** proposed the deletion of clause 8 on the grounds that granting a regulating officer the power to set conditions before a protest could suppress specific groups or viewpoints, discourage public participation and create a chilling effect on protests which undermines the principle of equality before the law.
147. **Tribeless Youth** submitted that the criminalisation of refusal to obey orders under clause 8 is an excessive measure that might criminalize minor infractions and could be used to unfairly penalize groups.

Committee Observations

148. The Committee observed that—
 - a. **the clause grants the regulating officer the power to set conditions before a protest thereby allowing the regulating officer to grant or deny the right on assembly and demonstration;**

- b. the imposition of conditions by the regulating officer indirectly limits the right to assemble and demonstrate in a manner that derogates from its core or essential content;
- c. the Bill goes against the General comment No. 37 (2020) on the right of peaceful assembly, which provides that the requirements for participants or organizers either to arrange for or to contribute towards the costs of policing or security, medical assistance or cleaning, or other public services associated with peaceful assemblies are generally not compatible with Article 21 of the International Charter on Civil and Political Rights.
- d. The imposition of financial conditions on the right to assembly has the effect of restricting to the right to assemble and demonstrate. The clause does not set up a framework to assess or receive monies for clean-up costs which leave it open for abuse and uncertainty.

H. CLAUSE 9- APPLICATION TO SET ASIDE OR VARRY CONDITION

149. **Hannah Wamuyu** proposed the removal of the requirement to appeal to High Court noting that this creates a bottleneck and is a matter that can be handled administratively.
150. **Kenya Conference of Catholic Bishops** proposed the amendment of the clause to include shorter timelines for hearing and resolution of the appeal to 24 hours, failure to which, the assembly or demonstration to proceed as planned. They noted that Court processes are lengthy and there therefore needs to be a set timeline for the court to make its decision so that it does not affect the timeliness of an assembly or demonstration.
151. **Article 19 Eastern Africa** proposed the amendment of clause 9(1) to read "*the Convener may apply to the High Court or a Chief Magistrate's Court as a matter of urgency*". They further proposed the amendment of clause 9(2) to read *that the application filed is to be filed within seven days after receipt of notice of a position of a condition or prohibition*. They proposed the deletion of subclause 9(3) to provide that an application to be made to a lower court or different platform for the case to be considered. They submitted that the High Court is a high-level process for persons with limited resources. They noted that the process of Court ought to be a last resort option as the constitution promotes alternative dispute resolution mechanisms based on mutual consent and participation. They further proposed deletion of clause 9(4) on the grounds that the Court cannot bar a place from public use as there are avenues for public use, noting that this violates general public to access public spaces.

Committee Observations

152. The Committee observed that—

- a. **The requirement to apply to the High Court to set aside conditions issued by a regulating officer creates unnecessary bureaucratic blocks that may impede on the right to assemble and demonstrate;**
- b. **The requirement to apply to court to set aside conditions has the effect of deterring spontaneous demonstrations which may be necessary to address urgent concerns.**

I. CLAUSE 10 - CONDUCT OF ASSEMBLY OR DEMONSTRATION

- 153. **Hannah Wamuyu** proposed a review of the power of marshals to regulate an assembly noting that this is the responsibility of the police.
- 154. **Katiba Institute** submitted that the provision imposes an obligation on the convener of an assembly to appoint marshals and take steps to ensure that the assembly or demonstration always proceeds peacefully, which is an unknown obligation in the Constitution and does not consider the position of 'spoilers' in the demonstration.
- 155. **The Police Reforms Working Group- Kenya** proposed the deletion of Clause 10(2) which they noted has been addressed in the Public Order Act Cap. 56.

Committee Observations

- 156. The Committee observed that—
 - a. **The appointment of marshals by a convener of an assembly or demonstration to control participants takes the from the National Police Service their statutory role of maintenance of law and order and preservation of peace under section 24 of the National Police Service Act.**

J. CLAUSE 11 - PROHIBITIONS DURING AN ASSEMBLY OR DEMONSTRATION

- 157. **IPOA** submitted further that Clause 11 is broadly drafted and may be interpreted to completely bar all signage and chants during demonstrations. They stated that Clause 11(c) is disproportionate as there could be a myriad of reasons for face coverings during protests such as religion, health, expression and privacy.
- 158. **Salma Khamala** proposed the deletion of Clause 11(c) on prohibition of the wearing of a mask of disguise noting that the use of masks is necessary due to police firing teargas and harmful substances at protestors.
- 159. **Kenya ICT Action Network (KICTANet) and Access Now** proposed the amendment of clause 11(c) and allow masks and disguises unless they are directly used to commit unlawful

acts. They further proposed inclusion of provisions to ensure that all police officers deployed to manage assemblies are identifiable by wearing police uniforms and visible badges and prohibit wearing of masks and concealment of officers' identities and vehicles. They proposed introduction of provisions to strictly regulate and prohibit use of surveillance technologies.

160. They submitted that the prohibition on wearing masks or disguises may infringe on privacy and safety, especially where participants seek anonymity to protect against retaliation. They submitted further that restrictions on attire could be misused to target specific groups, infringing on freedom of expression and assembly and puts protestors at risk. Further, they submitted that failure to define "incite hatred" is calculated likely to cause or encourage" under sub clause(a) and (c) provides room for broad interpretations to sanction speech that is not criminally punishable. They observed that subclause (c) fails the test of necessity as it fails to provide grounds for banning face coverings and whether such limitations are proportionate.
161. **Kenya National Commission on Human Rights (KNCHR)** proposed a clear definition of what constitutes "offensive weapon" under Clause 11(e) in the Kenyan context to avoid ambiguity.
162. **The National Police Service** proposed insertion of a new section 11(2) to provide for the certain offences related to conduct of demonstration and obstruction of certain classes of vehicles including ambulance, fire engine or vehicle belonging to the National Police Service or the Kenya Defence Forces.
163. **The Kenya conference of Catholic Bishops** proposed that the Bill allows participants to wear uniforms or display banners, as long as these items are not linked to hate speech. They submitted that this section gives the statewide discretion to limit the right to assemble. They submitted further that the prohibition of wearing uniforms and masks by participants in demonstrations or assembly goes against the standards of protecting freedom of expression during assemblies as provided for in the Guidelines on the Freedom of Association and Assembly in Africa.
164. **Katiba** Institute proposed the deletion of Clause 11 for the reason that it infringes on the freedom of expression under Article 33.
165. **Kiambu Justice and Information Network (KIJIN)** proposed an amendment to include an additional clause 11(2) to read '*A Police Officer or regulating officer shall not at an assembly or demonstration wear a disguise mask or any other apparels or item which obscures his or her face or prevents his or her identification*'. This they submitted will help curb the issue of rogue police officers hiding in plain clothing or other persons masquerading as officers.

166. **Article 19 East Africa** proposed the deletion of Clause 11 for the reason that it limits freedom of expression. They noted that international laws provide that police should also have identification markers including their official police badges
167. **Nabwire Obara Advocates** proposed the deletion of Clause 11(a)(b) and (c) for the reason that wearing of masks should be allowed to prevent reprisals and avoid state surveillance.
168. **Police Reforms Working Group-Kenya** proposed the deletion of clause 11(a)(b), (c) and (d) noting that banners, placards and songs foster unity and solidarity, creating a collective identity and strengthening participants' resolve which draw public and media attention. They noted that curtailing on these forms poses significant denial of free speech and assembly rights. They further proposed the amendment of sub clause (c) to define an offensive weapon noting that a broad definition can lead to malicious prosecution and retaliatory attacks at protestors who may be carrying placards.
169. **Kenya Civil Society Organisations proposed** the deletion of Clause 11(c) for the reason that it is not proportionate to the legitimate aims sought to be achieved by the imposition of those restrictions. They submitted that the provision is contrary to Article 24(2) and paves way for reprisal and retribution being meted on organisers and protestors. They submitted that the clause paves way for constraints on religion given that religions like Islam and Judaism require covering of the head.
170. **WeCare Community-Based Organization** proposed that the Bill should ensure that that prohibitions are specific to incitement that is likely to lead imminent violence. They noted that prohibitions against inciting hatred or violence through various forms of expression such as banners, placards and speech can lead to unjust limitations on legitimate forms of protesting. They proposed that the Bill defines the terms 'calculated and likely to cause or encourage violence' noting that vagueness can lead to inconsistent enforcement and potential abuse. They submitted that prohibiting the wearing of masks that obscure a person's face raises significant concerns about privacy and safety particularly in demonstrations. They proposed that the Bill defines offensive weapons for the reason that prohibition against possessing offensive weapons should focus on preventing real threats while avoiding excessively limiting the right.
171. **Tribeless Youth submitted** that Clause 11(c) is unconstitutional and denies protestors anonymity from the state.

Committee Observations

172. The Committee observed that—
- (i) **The prohibition of face coverings, masks or clothing that prevents does not cater for religious and cultural sensitivities**

K. CLAUSE 12- LIABILITY FOR DAMAGE

173. **IPOA** submitted that Clause 12 imposes unfairly targets demonstration organisers and imposes conditions that are fundamentally incompatible with the way public protests happen.
174. **Salma Khamala** proposed the deletion of Clause 12(1) on the grounds that is well known that previously goons have been hired to destroy property during protests and that there are already provisions in law to deal with this. She submitted that the police should be present to protect property during protests.
175. **Hannah Wamuyu** proposed that anyone caught destroying property should be taken through the court process. She submitted that the provision on damages was punitive to organisers who do not have the capacity to control mobs. She further proposed the removal of the proviso stipulating what is sufficient proof noting that it interferes with the trial process and the discretion of the Court.
176. **The Kenya National Commission on Human Rights (KNCHR)** proposed deletion of clause 12(1), (2) on the grounds that it restricts freedom of assembly in general. They submitted that the clause contravenes Article 37 as read with Article 24 (2)(c) of the Constitution which prohibits the enactment of legislation that limits a right or fundamental freedom so far as to derogate from its core or essential content.
177. They submitted that the clause places liability on every person and organization participating in an assembly for damage caused to property during the assembly or demonstration. They noted that the proviso seeks to shift the burden of proof from the prosecution to the organizers which is not only not justifiable but also illegal. They submitted that peaceful demonstrators and organizers should not be penalized for their actions, instead, the State should fulfil its positive obligation to ensure peaceful assemblies by protecting such assemblies from such elements.
178. The **National Police Service Commission** proposed that Clause 12(1) be amended to cater for unforeseen acts of rogue elements. They noted that this provision places all the liability for damages to property arising from demonstrations on organizers.
179. **The Kenya Conference of Catholic Bishops proposed** amendment of clause 12 so that liability is strictly personal, to remove all liability against an organization or person convening the assembly or demonstration.
180. **Katiba Institute** proposed the deletion of Clause 12 for the reason that it creates an excessive burden on right holders and severely limits exercising a right. They submitted that the civil liability threat creates a chilling effect on the right.

181. **Transparency International submitted** that Clause 12(1) is a punitive clause that seeks to limit exercise of the right under article 37, without establishing the relation between the limitation and its purpose, as required under article 24(1) (e) of the Constitution.
182. **The Law Society of Kenya** proposed the deletion of Clause 12 on the grounds that it introduces a prohibitive and unreasonable financial burden on citizens intending to hold a demonstration. They submitted that it is unconstitutional so far as it places a blanket liability on all demonstrators,
183. **Kenya Civil Society Organizations** proposed deletion of Clause 12(1) for the reason that the Clause places a burden upon the citizen to justify their exercise of a fundamental right rather than placing the burden upon the state.
184. **Police Reforms Working Group** proposed the deletion of clause 12 for the reason that it Limits the right to assemble as per Article 37 by placing a huge responsibility on organizers, an unfair restriction of their freedom to assemble.
185. **ARTICLE 19 Eastern Africa** proposed the deletion of subclause 1 noting that the organizers should not be held vicariously liable for actions they have not facilitated and that the police maintain the general role of maintaining peace and promoting security during demonstrations. They also proposed the deletion of the last part of subclause 2 for the reason that the burden of proof always lies with the claimant/prosecutor, not the person alleged to commit the crime.
186. **Nabwire Obara Advocates** proposed the deletion of clause 12(1) and (b) for the reason that imposing liability on organizers seems intended to discourage or prevent the organizing and holding of assemblies altogether.

Committee Observations

187. The Committee observed that—

- a. **Imposing liability for damages during an assembly or demonstration on all organisations and participants imposes financial sanctions on the freedom of assembly. Therefore, it restricts the right contrary to Article 24 (2)(c) of the Constitution which prohibits the enactment of legislation that limits a right or fundamental freedom so far as to derogate from its core or essential content.**
- b. **The Civil Procedure Act provides an avenue for recourse in law for damage to property including damage cause during an assembly or demonstration.**

L. CLAUSE 13- POWERS OF THE POLICE DURING ASSEMBLY OR DEMONSTRATION

188. **IPOA** submitted Clause 13 grants extensive powers to the police that could if implemented restrict the right under Article 37.
189. **Hannah Wamuyu** proposed the amendment of clause 13(d) to provide circumstances under which police may act and define persons against whom actions may be taken. She submitted that the clause gives room for police to harass even those who are not participants.
190. **Kenya ICT Action Network (KICTANet)** proposed that the Bill limit police powers to disperse assemblies to situations where there is an immediate and credible threat to public safety, introduce mandatory de-escalation procedures. This is to ensure that dispersal of assemblies is a measure of last resort, used only when there is a clear and present danger that cannot be addressed through less restrictive means. They noted that such broad powers increase the risk of arbitrary enforcement and excessive force which has been historically abused. They noted that the African Commission's guidelines on Freedom of Association and Assembly stress that force should only be used as a last resort and must be proportional.
191. **Kenya National Commission on Human Rights (KNCHR)** proposed the addition of an express provision that states that the law enforcement officials have a duty to refrain from using force when policing assemblies; that the use of force should be the last resort, and only when is necessary and proportionate response to the behaviour of the protesters. They proposed that where some participants are violent, the obligation to facilitate and protect those assembling peacefully remains in line with the African Commission General Comment 3, the Right to Life (art 4).³⁶ and the Resolution on the Right to Peaceful Demonstrations, ACHPR/Res.281 (LV) 2014.³⁷
192. The **National Police Service Commission** proposed amendment of Clause 13 to clearly define the safety concerns to be addressed by the provision. They observed that the provision grants sweeping powers upon the police to impose conditions on demonstrators.
193. **The Law Society of Kenya** proposed insertion of a new sub section 2 after 13(d) to provide for the steps to be taken by the Police where a Police officer has reasonable grounds to believe that danger to persons and property, as a result of the gathering or demonstration, cannot be averted by the steps referred to in clause 13. This is to provide a clear procedure for police officers to follow if they believe that a gathering or demonstration poses a significant risk to public safety or property, ensure that actions taken are based on established protocols, which enhances safety and minimizes harm and ensures the protection of human rights and that there is a proportional response.
194. **Kiambu Justice and Information Technology (KIJIN)** proposed an additional clause 13(2) to read '*a police officer shall not use more force than is reasonable such as use of irritants and*

water cannons to manage a demonstration or assembly except only as a measure of last resort' to give room for additional clauses and limit excessive force used by police when controlling protestants.

195. **ARTICLE 19 Eastern Africa** proposed an amendment to add an express provision that the law enforcement officials have a duty to refrain from using force when policing assemblies; that use of force should be the last resort and only when necessary and proportionate response to the behaviour of the protestors, to justify the right to life.
196. **Police Reforms Working Group- Kenya** proposed the deletion of subclause 1 and 2 and noted that the primary role of police in assemblies is to provide security and maintain law and order when necessary.

Committee Observations

197. The Committee observed that—

- a. **The Bill grants powers to the police but fails to give obligations of the police during an assembly.**

M. CLAUSE 14 - OFFENCES AND PENALTIES

198. **IPOA submitted** that Clause 14, grants the Cabinet Secretary broad powers to make regulations which could lead to broad executive control.
199. **Hannah Wamuyu** proposed a review of Clause 14(2) which prescribes sentencing in mandatory terms noting that it interferes with the discretion of the court.
200. **The National Police Service Commission** proposed an amendment of the Bill to make it an offence to injure police officers or cause damage to police property noting that the rights of demonstrators should not extend to taking away the rights of police officers. They also proposed to have a clear provision on noise during assemblies and demonstrations to prevent noise pollution during assemblies and demonstrations.
201. **Kenya ICT Action Network (KICTANet) and Access Now** proposed the decriminalisation and removal of criminal penalties for participation in assemblies, unless linked to acts of violence or serious unlawful conduct. They proposed the introduction of administrative remedies and warnings before considering prosecution noting that criminalisation disproportionately impacts public and discourages civic engagement.
202. **Katiba Institute** proposed the deletion of Clause 14 on the basis that the principle of proportionality would favour the retention of the fine but the deletion of the imprisonment.

They submitted that the criminalisation of the failure to give notice is an unjustifiable violation of the right to demonstrate.

203. **Transparency International** proposed the amendment of clause 14(1)(a) and noted that it fails to consider spontaneous assemblies which are recognized under the Constitution and protected under international law.
204. **The Law society of Kenya** proposed the deletion of Paragraph 14(1)(a) on the grounds that it is already pre-judicial to the organizers of protests and peaceful assembly and thus poses a significant threat to freedom of assembly. They also proposed amendment of Clause 14(2) to reduce the penalty for offences to thousand shillings or to imprisonment for a period not exceeding one month or to a proportionate penalty anchored on the principles of green justice system. They submitted that protest, assembly and/or demonstration is not a crime thus punitive measures should not be imposed on citizens.
205. **Police Reforms Working Group- Kenya** proposed the deletion of subclause (1) and (b) As well as the amendment of clause 14(1)(d) to add the definition of weapon/object and ensure clarity. They submitted that introducing unnecessary offences targeting peaceful protestors will potentially transform individuals exercising their fundamental freedom into being perceived as criminals.
206. **WeCare Community-Based Organization** proposed that the Bill defines the term 'inadequate notice' noting that it is too broad and could lead to arbitrary enforcement. Further they propose that the prohibitions be reviewed to ensure that they do not infringe the right to assemble, address concerns related to police conduct and consider a balance between security and civil liberties. They noted that the imposition of conditions could lead to undue restrictions, especially if conditions are unreasonable or excess. They further proposed that there was a need to define weapons and objects need to be defined.

Committee Observations-

207. The Committee observed that –

- a. **The criminalisation of failure to give notice indirectly prohibits spontaneous assemblies and demonstrations;**
- b. **The criminalisation of failure to give adequate notice does not conform with the standard for notification of assemblies under Guidelines on Freedom of Association and Assembly in Africa 2017 which recommends that notification regime requires that the presumption is always in favour of holding assemblies, and that assemblies not be automatically penalized, through dispersal or sanction, due to failure to notify authorities.**

N. CLAUSE 16 - REPEAL OF SECTION 5 AND 6 OF THE PUBLIC ORDER ACT

208 **Hannah Wamuyu** proposed the deletion of clause for the reason that it sanctions the harassment and abduction of protests by people carrying weapons and purporting to execute orders from above **The Law Society of Kenya** submitted that the repeal of section 5 of the Public Order Act is ideal but should be done through Statute Law (Miscellaneous Amendment) Bill.

Committee observations

209 The Committee observed that—

- a. **The Public Order Act is the primary law that prescribes management of public order and caters generally other matters other than assemblies and demonstrations.**

PART IV

4.0 COMMITTEE OBSERVATIONS


210. Upon consideration of the Bill, the Committee observed the following—

- (i) The right to assemble, to demonstrate, to picket, and to present petitions to public authorities is not absolute and may be limited in accordance with the provisions of Article 24 of the Constitution;
- (ii) The Assembly and Demonstration Bill, 2024 does not meet the threshold for limitation of fundamental rights and freedoms as set forth under Article 24 of the constitution. Particularly, the limitation on the right to assemble, demonstrate, picket and present petitions on the basis of public safety, public order and the protection of the rights and freedoms of other persons are overly broad and does not specifically express the intention to limit the right and the nature and extent of limitation as required by Article 24(2)(a);
- (iii) The provisions of the Bill, particularly granting the regulating officer the power to impose conditions for the holding of an assembly or demonstration including clean-up costs, the requirement for an application to the High Court to set aside conditions given by the regulating officer and the imposition of joint liability for damage caused during an assembly or demonstration indirectly limits the right in a manner that it derogates from its core and essential content contrary to Article 24 (2)(c) of the Constitution;
- (iv) The provisions of the Bill do not meet the threshold of international treaties and conventions and international best practice on the conduct of assemblies;
- (v) There is need to formulate legislation and guidelines for the conduct of assemblies and demonstrations through broad and inclusive process in compliance with the judgment of the Court in *Ngunjiri Wambugu v Inspector General of Police Caninet Secretary for Interior and the Attorney General (Nairobi Petition No. 269 of 2016)*.
- (vi) The Public Order Act is the primary legislation regulating public order. Amendment to the Public Order Act to align with international law, best practice and current development in public order management is more appropriate instead of enactment of a new separate legislation to regulate assemblies and demonstrations only.

PART V


5.0 COMMITTEE RECOMMENDATIONS

211. The Committee having considered the Assembly and Demonstration Bill (National *Assembly Bill No. 28 of 2024*) recommends that the House **rejects** the Bill.

SIGN.  DATE. 03/09/2025

HON. GABRIEL TONGOYO, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & INTERNAL SECURITY

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 03 APR 2025	DAY: THURSDAY
TABLED BY:	VICE-CHAIRPERSON, DEPTAL COMMITTEE ON ADMINISTRATION & INTERNAL SECURITY
CLERK-AT-THE-TABLE:	J. Lemeate

MINUTES OF THE 17TH SITTING OF THE DEPARTMENTAL, COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY HELD ON THURSDAY, 18TH MARCH, 2025 IN COMMITTEE ROOM 17, 3RD FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS AT 10.00

PRESENT

1. **Hon. Gabriel Koshal Tongoyo, CBS, MP - Chairperson**
2. Hon. Kaluma George Peter, CBS, MP
3. Hon. Fred C. Kapondi, MP
4. Hon. Aduma Owuor, MP
5. Hon. Sarah Paulata Korere, MP
6. Hon. Mburu Kahangara, MP
7. Hon. Oku Kaunya, MP
8. Hon. Rozah Akinyi Buyu, MP
9. Hon. Caroline Jeptoo Ng'elechei, MP
10. Hon. Peter F. Masara, MP
11. Hon. Liza Chepkorir Chelule, MP
12. Hon. Protus Ewesit Akujah, MP
13. Hon. Amb. Francis Kipyegon Sigei, EBS, MP

ABSENT WITH APOLOGY

1. **Hon. Col (Rtd) Dido Rasso, MBS, MP - Vice Chairperson**
2. Hon. Hussein Weytan Mohammed, MP

IN-ATTENDANCE

COMMITTEE SECRETARIAT

1. Mr. John Mugoma - Clerk Assistant I
2. Ms. Grace Wahu - Clerk Assistant II
3. Mr. Gideon Kipkoech - Clerk Assistant II
4. Ms. Judith Kanyoko - Legal Officer II
5. Ms. Delvin Onyantha - Research Officer II
6. Ms. Ivy Maritim - Media Relation Officer III
7. Mr. Rodgers Kilungya - Audio Officer
8. Mr. Benson Kimanzi - Serjeant-At-Arms
9. Mr. Nephath Njuguna - Committee Intern
10. Ms. Libbie Kiragu - Media Relations Intern

AGENDA

1. Prayers
2. Preliminaries and adoption of the agenda
3. Confirmation of Minutes of previous Sittings
4. **Consideration and adoption of the Assembly & Demonstration Bill, 2024 sponsored by Hon. Geoffrey Kiringa Ruku, MP**
5. Any Other Business
6. Adjournment.

MIN./NO./DC-AIS/2025/81: PRELIMINARIES & ADOPTION OF AGENDA

The Sessional Chairperson, Hon. Fred Kapondi, MP called the meeting to order at 10.20 pm and said a prayer. The agenda of the meeting was adopted having been proposed by Hon. Liza Chelule, MP and seconded by Hon. Francis Sigei, MP.

MIN./NO./DC-AIS/2025/82: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The confirmation of Minutes was deferred to the next meeting.

MIN./NO./DC-AIS/2025/83: CONSIDERATION AND ADOPTION OF THE REPORT ON THE ASSEMBLY AND DEMONSTRATION BILL, 2024

The Committee considered and adopted the report on the consideration of the Assembly and Demonstration Bill, 2024 and made the following observations and recommendations having been proposed by the Hon. Aduma Owuor, MP and seconded by the Hon. Francis Sigei, MP:-

Committee Observations:

- (i) The right to assemble, to demonstrate, to picket, and to present petitions to public authorities is not absolute and may be limited in accordance with the provisions of Article 24 of the Constitution;
- (ii) The Assembly and Demonstration Bill, 2024 does not meet the threshold for limitation of fundamental rights and freedoms as set forth under Article 24 of the constitution. Particularly, the limitation on the right to assemble, demonstrate, picket and present petitions on the basis of public safety, public order and the protection of the rights and freedoms of other persons are overly broad and does not specifically express the intention to limit the right and the nature and extent of limitation as required by Article 24(2)(a);
- (iii) The provisions of the Bill, particularly granting the regulating officer the power to impose conditions for the holding of an assembly or demonstration including clean-up costs, the requirement for an application to the High Court to set aside conditions given by the regulating officer and the imposition of joint liability for damage caused during an assembly or demonstration indirectly limits the right in a manner that it derogates from its core and essential content contrary to Article 24 (2)(c) of the Constitution;
- (iv) The provisions of the Bill do not meet the threshold of international treaties and conventions and international best practice on the conduct of assemblies;
- (v) There is need to formulate legislation and guidelines for the conduct of assemblies and demonstrations through broad and inclusive process in compliance with the judgment of the Court in *Ngunjiri Wambugu v Inspector General of Police Caninet Secretary for Interior and the Attorney General (Nairobi Petition No. 269 of 2016)*.
- (vi) The Public Order Act is the primary legislation regulating public order. Amendment to the Public Order Act to align with international law, best practice and current development in public order management is more appropriate instead of enactment of a new separate legislation to regulate assemblies and demonstrations only.

Committee Recommendation

The Committee having considered the Assembly and Demonstration Bill (National *Assembly Bill No. 28 of 2024*) recommended that the House **rejects** the Bill.

MIN./NO./DC-AIS/2025/84: ANY OTHER BUSINESS

There was no other business.

MIN./NO./DC-AIS/2025/85: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.22 p.m. The next meeting will held be on notice.

SIGNED



DATE

23/04/2025

HON. GABRIEL TONGOYO, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & INTERNAL SECURITY



THE NATIONAL ASSEMBLY
13TH PARLIAMENT – FOURTH SESSION-2025
COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY

REPORT ADOPTION LIST OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY ON ASSEMBLY AND DEMONSTRATION BILL, 2024 (NATIONAL ASSEMBLY BILL NO.28) SPONSORED BY HON. GEOFFREY KIRINGA RUKU, MP.

We, the undersigned Members of the Departmental Committee on Administration and Internal Security do hereby append our signatures to adopt this Report

Date: 18/03/2025

No.	MEMBER	SIGNATURE
1.	Hon. Gabriel Koshal Tongoyo, CBS, MP - Chairperson	
2.	Hon. Col (Rtd) Dido Rasso, MBS, MP - Vice Chairperson	
3.	Hon. Kaluma George Peter, CBS, MP	
4.	Hon. Fred C. Kapondi, MP	
5.	Hon. Aduma Owuor, MP	
6.	Hon. Sarah Paulata Korere, MP	
7.	Hon. Liza Chepkorir Chelule, MP	
8.	Hon. Mburu Kahangara, MP	
9.	Hon.(Dr.)Peter Francis Masara, MP	
10.	Hon. Protus Ewesit Akujah, MP	
11.	Hon. Oku Kaunya, MP	
12.	Hon. Rozaah Akinyi Buyu, MP	
13.	Hon. Amb. Francis Kipyegon Sigei, EBS, MP	
14.	Hon. Caroline Jeptoo Ng'elechei, MP	
15.	Hon. Hussein Weytan Mohammed, MP	



Date: 9th September, 2024

THE CLERK OF THE NATIONAL ASSEMBLY,
PARLIAMENT OF KENYA,
P.O. BOX 41842-00100, NAIROBI, KENYA.

RE: THE KENYAN CIVIL SOCIETY JOINT MEMORANDUM ON THE ASSEMBLY AND DEMONSTRATION BILL, 2024

*② Mr. Abenayo Wasike, HoD
Pls bring to the attention of the Dept.
Comm. on Admin. & Internal Security.*

1. Background and Introduction

The Assembly and Demonstration Bill, 2024 sponsored by **Hon. Geoffrey Ruku**, the MP for Mbeere North is currently under public participation in consideration of its provisions by the National Assembly and Committee on Administration and Internal Security.

*July
18/02/25*

This memorandum, therefore, is prepared in line with Article 10 of the Constitution on our behalf and on behalf of others, to contribute to the Bill. PAWA Initiative conducted a meeting with a group of twenty-two (22) Civil Society Organisations (CSOs) on the 6th of September, 2024, to review, analyse and give proposals on the Assembly and Demonstration Bill, 2024.

Through the initiative, we compiled feedback for consideration to further secure the interests, rights, and ultimate democracy of the Kenyan people.

*Mr. Mugoma
pls inform
the Committee
A-waite
18/2/25*

2. About the initiative

Development of this memorandum was initiated by "PAWA254" a youth-led non-profit established in Nairobi Kenya. Fuelled by its networks and knowledge of the latent power inherent in Kenya's youth, PAWA254 convened the above-stated multi-stakeholder forum as a measure to advocate for progressive reforms in good governance, accountability, and respect for human rights principles in Kenya.

Duly, this memorandum is jointly submitted and incorporates views of the following partner organisations; PAWA254, Mzalendo Trust, Uraia Trust, Haki Yetu, Emerging Leaders Foundation (ELF), The Institute of Social Accountability (TISA), Amnesty International-Kenya, Transparency International (TI-Kenya), Muslim Women Advancement of Rights and Protection (MWARP), Voluntary Service Overseas (VSO), Youth Serving Organization (YSO), Women Volunteer for Peace (WOVOP), Centre for Gender & Development, Elgon Young Professionals, African Youth Trust, Human Protection and Justice Organisation, HusiKA CHEMA Initiative, Dada Power, Centre for Enhancing Democracy, Good Governance (CEDGG), Kenya Ni Mimi and United Disabled Persons Kenya (UDPK).



3. Major Concerns

a. Freedom of Expression

The proposed Bill seeks to curtail freedom of expression, a right enshrined in the Constitution, by imposing broad measures in which the State can dictate how individuals choose to express their views and voice their concerns. As such, the Bill aims to impose draconian rules upon the Kenyan citizenry, an issue of grave concern.

b. Criminal Liability of Protesters

The Bill criminalises “unlawful assembly” and introduces penalties, including imprisonment of up to a year. There is extensive discretion given to the law enforcers to allow or deny demonstrations from going on (which is unconstitutional) and also unjustifiable restrictions are put in place to define unlawful assembly. The penalties are contrary to Article 24(1)(e) which provides that the limitation should be such that it is the least restrictive means to achieve the purpose. The penalties prescribed in the Bill are punitive, and restrictive and make the Right inaccessible to some Kenyans. The Bill also has an element of instigating intrinsic censures to Kenyans, as many Kenyans will not exercise their Rights for fear of facing the penalties.

c. Timelines

The proposed Bill seeks to make it a requirement for members of the public who want to convene an assembly or demonstration to inform the police of their intention to assemble or demonstrate, at least 3 days and no more than 14 days before the demonstrations/protests. This requirement might be well-intentioned in order to provide the police with adequate time to mobilise resources to protect and defend protestors, but it fails to take into account the spontaneous nature of which demonstrations, protests and assemblies take place. As such, this should be reasonably addressed in the Bill.

d. Permission Clauses

The National Police Service has no right to allow or disallow protests. They should be merely informed of the intention to assemble or protest, to allow them to prepare accordingly. Article 19(3) of the COK, states that the Rights and fundamental freedoms captured in the Bill of Rights belong to each individual and are not granted by the state. It is not the state that determines where and to whom rights accrue – it is the duty of the state to protect those rights and fundamental freedoms.

e. Invasion of Privacy

The Bill is contrary to Article 31 of the Constitution of Kenya, which protects the right to privacy of every citizen. Instead, the Bill compels organisers of demonstrations, or assemblies, to provide their personal details, including their physical addresses. This is in direct contravention of Article 37 of the Constitution of Kenya, and therefore this must be adequately addressed.

f. The Mask Mandate

The Bill introduces a provision demanding that citizens do not cover their faces during demonstrations. This is contrary to Article 24(2) of the Constitution of Kenya, and further paves the way for reprisal and retribution being meted out to organisers and protestors alike; a tactic we have seen used by law enforcement officials throughout the course of the 2024 demonstrations that resulted in arbitrary arrests, and abuse of fundamental freedoms by law enforcement officials.

g. Religious Restrictions & Impositions

It is noted with grave concern that certain provisions of the bill are contrary to freedom of religion, as provided for by Article 32 of the Constitution of Kenya. As it is well known, the world over, that numerous religions and faiths use face coverings in their day-to-day lives, and if passed the proposed Bill would be in direct violation of their fundamental rights and freedoms by, essentially, ensuring that a large percentage of the population cannot participate in public demonstrations. This is especially true within the Muslim and Jewish faiths, religions that are practised widely in Kenya.

h. Financial Liability of Organisers & Protestors

The proposed Bill seeks to introduce numerous factors that would impose financial liability upon protesters and organisers, an act that is fundamentally unconstitutional. The Bill should instead focus, and highlight, how the State will further provide its citizens with resources during times of demonstrations and assembly, including resources to facilitate cleaning up costs given that taxes are paid by the same citizens who demonstrate and protest.

It is generally understood that State's should never charge a fee for one to exercise their fundamental rights and freedoms, but the Bill seeks to impose draconian requirements which contravene several internationally recognised statutes, laws and principles.

4. Submissions

No.	Clause (as it is in the Bill)	Proposal	Justification
1.	<p>Section 6(1) – The right to peacefully assemble or demonstrate under Article 37 of the Constitution may be limited under Article 24 of the Constitution in the manner specified in subsection (2).</p> <p>Section 6(2) – The right contemplated in subsection (1) may not be exercised by any person where such assembly or demonstration may affect; (a) public safety; (b) public order; and the protection of the rights and freedoms of other persons.</p>	<p>This provision of the Bill should be amended by way of deletion, given that it provides implementing officials with wide discretionary powers that are not adequately addressed or highlighted in the document.</p>	<p>In the case of <i>Grayned v. City of Rockford</i>, 408 U.S. 104 (1972), the “overbreadth doctrine” was referred to and this dictum states that “if a statute is so broadly written that it deters free expression, then it can be struck down on its face because of its chilling effect”.</p> <p>This proposed section suffers from the overbreadth doctrine as it provides implementing officials with wide discretionary powers to deny permission for non-compliance with section 6. It is therefore contrary to various principles of law, and we are of the view that it further underscores the unconstitutionality of this Bill.</p>
2.	<p>Section 7(10): criminalisation of assembly or demonstration held without notice (with a one-year term of imprisonment)</p> <p>Section 14 – This provision has been included to make it an offence for a person to resist arrest from a police officer (regardless of the circumstances).</p>	<p>Both the above provisions place criminal liability on protestors, thus making them susceptible to imprisonment. They contravene the principle of proportionality, of which is trite in law. It is therefore our view that the two provisions be left out in their entirety, or be edited to address the fact that they</p>	<p>The proposed bill seeks to impose criminal liability on protestors, contrary to the above judgement made by the late Justice Onguto, and contrary to Article 37 of the Constitution of Kenya, 2010 which affords all citizens the freedom of assembly; a fundamental right that is enshrined in Kenyan law.</p> <p>The Bill also criminalises “unlawful assembly” and introduces penalties, including imprisonment of up to a year. There is extensive discretion given to the law</p>

		<p>contravene the Constitution of Kenya, 2010.</p> <p>The state cannot roll back the constitutional rights of citizens under the pretence of 'peace and security', as was highlighted by the judgement in the case of Eugene Wamalwa v Minister for State for Internal Security (2011).</p> <p>In essence, "the punishment of the crime does not fit the offender".</p>	<p>enforcers to allow or deny demonstrations from going on (which is unconstitutional) and also unjustifiable restrictions put in place to define unlawful assembly.</p> <p>The penalties are contrary to Article 24(1)(e) which provides that the limitation should be such that it was the least restrictive means to achieve the purpose. The penalties prescribed in the Bill are punitive, restrictive and make the Right inaccessible to some Kenyans. The Bill also has an element of instigating intrinsic censures to Kenyans, as many Kenyans will not exercise their Rights for fear of facing the penalties.</p>
3.	<p>Section 7(3)(a) – the full names and physical addresses of the organiser of the proposed assembly or demonstration</p> <p>Section 7(3)(b) – the full names and physical addresses of the marshals appointed by the convenor, if any</p>	<p>These provisions are contrary to the principles of an individual's right to privacy as it requires one to provide their personal details. As such, it is our view that these provisions should be edited so as to ensure that organisers need not provide personal details such as their personal residential addresses.</p>	<p>In the landmark case of National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449 (1958), the Supreme Court of the United States held that sharing a register of NAACP members' details would leave them susceptible to persecution by both state and non-state actors.</p> <p>As noted, these provisions would be a breach of one's right to privacy as it would involve them providing personal and private details; this is contrary to Article 37 of the Constitution which provides protestors with the right to anonymity.</p> <p>Furthermore, there is good reason to reject this provision due to fear of reprisals as Kenya has witnessed a record number of abductions and forced disappearances in the recently held 2024 nationwide protests.</p>

			It is a well understood principle that under freedom of association one should be allowed to associate “without making yourself transparent to the State”.
4.	<p>Section 8(1): The regulating officer may, in a written notice, specify conditions for the holding of an assembly or demonstration.</p> <p>Section 8(2): A condition under subsection (1) shall relate to –</p> <ul style="list-style-type: none"> (a) a matter concerning – <ul style="list-style-type: none"> (i) public safety; (ii) the maintenance of public order; or (iii) the protection of the rights and freedoms of persons (c) the recognition of any inherent environmental or cultural sensitivity of the place of assembly and demonstration; and (d) the application of the place of assembly or demonstration of any resource management practice of a delicate nature. 	<p>It is our view that this provision be deleted in its entirety from the proposed Bill, and should not be tabled, presented or argued for.</p> <p>This section of the Bill provides the regulating officer(s) with broad powers to impose conditions for assemblies and demonstrations. In essence, the provision seeks to restrict and stifle public assemblies by providing the regulating officer in question with broad discretionary powers, and it is our view that this is unjust and unconstitutional.</p>	<p>This provision paves way for abuse of discretionary powers of the regulating officer(s), and paves the way for further restrictions to the right to assemble.</p> <p>The proposed section of the Bill is contrary to the judgement rendered in the case of Ferdinand Ndung’u Waititu & 4 others v Attorney General & 12 others [2016] eKLR, whereby it was held that regulating public meetings and processions was contrary to the Constitution, and it further affirmed that organisers of public meetings had the right to choose an appropriate public venue and use public streets and public areas for such meetings.</p> <p>The learned Judge in the aforementioned case concluded by stating that, “... I decline to draw any picket or demonstration lines... in the form of prohibiting demonstrations, protest marches and assemblies in particular places.”</p> <p>Furthermore, this provision does not pass the “provided by law” threshold whereby it is required that restrictions are: (i) provided by law; (ii) pursue a legitimate aim; and (iii) that they conform to the strict tests of necessity and proportionality.</p>

5.	Section 8(2)(b) – the payment of the costs of cleaning up which may arise out of the holding of the assembly or demonstration	This section should be amended so that the imposition of cleaning up costs is borne by the State, or its agents, rather than the general public.	<p>The Human Rights Council has held that the requirements for protesters or organisers of protests to contribute or fully bear the clean-up cost is not compatible with Article 21 of the International Covenant on Civil and Political Rights (ICCPR).</p> <p>The ‘Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 2016’ by the United Nations Office of the High Commissioner for Human Rights clearly states that states must facilitate protests, and this obligation includes the provision of basic services, such as traffic management, medical assistance and clean-up services.</p> <p>It further states that protest organisers should not be held responsible for the provision or costs of such services and should never be charged a ‘protest fee’, and that charging a protest fee equates to a “state demanding payment for the exercise of fundamental human rights”, an act that should never be permitted.</p> <p>As such, the proposed clause is contrary to internationally recognised Conventions and principles, and is, without a shadow of a doubt, punitive and unconstitutional.</p>
6.	Section 11(c) – (a person shall not, at an assembly or demonstration) wear a disguise or mask or any other apparel or item which	It is our view that this section should be eliminated in its entirety from the proposed Bill, and should instead address genuine concerns of	In 2019, the Government of Hong Kong passed the Prohibition on Face Covering Regulation [“PFCR”] under the colonial-era Emergency Regulations Ordinance. In the case of Kwok Wing Hang and Others v. Chief Executive in Council

	<p>obscures his face or prevents his identification.</p>	<p>law abiding citizens such as freedom of expression, as well as privacy and confidentiality rights.</p>	<p>and Another (18/11/2019, HCAL2945/2019) [2020] 1 HKLRD 1, [2019] HKCFI 2820, the High Court struck down the PFCR as being a disproportionate and excessive violation of the freedom of expression.</p> <p>The doctrine of proportionality is trite in law, and this provision fails to address the same and take it into account; the proposal is not “proportionate to the legitimate aims sought to be achieved by the imposition of those restrictions”.</p> <p>It is our view that the introduction of this provision is contrary to Article 24(2) of the Constitution of Kenya, and further paves way for reprisal and retribution being meted on organisers and protestors alike; a tactic we have seen used by law enforcement officials throughout the course of the 2024 demonstrations that resulted in arbitrary arrests, and abuse of fundamental freedoms by law enforcement officials.</p> <p>Furthermore, the introduction of this act paves way constraints on freedom of religion, and freedom of expression, given that multiple religions, such as Islam, Judaism etc, require those who adhere to the faith to cover their heads and faces. This provision is therefore discriminatory, and further underscores the unconstitutional nature of this Bill as it is contrary to Article 32(3) of the Constitution of Kenya in which it is stated that “A person may not be denied access to any institution,</p>
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			employment or facility, or the enjoyment of any right, because of the person's belief or religion".
7.	Section 12(1) – Where, during the carrying on of an assembly or demonstration, damage to property occurs as a result of the assembly or demonstration, every organisation and every person participating in such assembly or demonstration shall... be jointly and severally liable for such damage.	The proposed provision should be deleted from the Bill in its entirety, and the Bill should instead draw attention to how the government, and its agencies, should instead make allocations for providing protestors and organisers with further protection from being unjustly and unlawfully persecuted.	<p>This proposed section places the "burden upon the citizen to justify their exercise of a fundamental right", rather than placing the burden upon the state to "justify restriction upon the right".</p> <p>In essence, this provision introduces a reverse burden that is contrary to the Constitution, and other legal frameworks, whereby it is the individual or the organisation who must prove that they were not directly responsible for causing damage to property in the course of exercising their fundamental rights, rather than the State having to show that they were responsible.</p> <p>In the internationally recognised case of Commercial Stevedoring Agricultural and Allied Workers Union and Others v Oak Valley Estates (Pty) Limited and Another CCT 301/20, the Court rightfully stated that "... where a protest or strike is substantially peaceful, but there are isolated and sporadic instances of unlawful conduct, only those protesters who associate with the acts of unlawfulness can permissibly be placed under interdict".</p> <p>As such, this provision is contrary to the judgement rendered in the above-mentioned case, and it is wholly unconstitutional given the reverse burden issue that it seeks to introduce and codify as law.</p>

Acknowledged on 9th September 2024 by:

1. PAWA254
2. Mzalendo Trust
3. Uraia Trust
4. Haki Yetu Organization
5. Emerging Leaders Foundation (ELF-Africa)
6. The Institute of Social Accountability (TISA)
7. Amnesty International-Kenya
8. Transparency International (TI-Kenya)
9. Muslim Women Advancement of Rights and Protection (MWARP)
10. Voluntary Service Overseas (VSO)
11. Youth Serving Organization (YSO)
12. Women Volunteer for Peace (WOVOP)
13. Collaborative Centre for Gender & Development
14. Elgon Young Professionals
15. African Youth Trust
16. Human Protection and Justice Organisation
17. CHEMA Initiative
18. HusiKA
19. Dada Power
20. Centre for Enhancing Democracy and Good Governance (CEDGG)
21. Kenya Ni Mimi and
22. United Disabled Persons Kenya (UDPK)

Submitted by:

Djae Aroni,
Advocacy & Communications Manager,
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+254 790 490067

MEMORANDUM ON THE ASSEMBLY AND DEMONSTRATIONS BILL, (National Assembly Bill No. 28 of 2024)

TO:
THE CHAIRPERSON,
ADMINISTRATION AND INTERNAL SECURITY

THRO'
CLERK OF NATIONAL ASSEMBLY,
P.O.BOX 41842-00100
NAIROBI, KENYA
9TH SEPTEMBER, 2024

WECARE COMMUNITY-BASED ORGANIZATION
P.O.BOX PRIVATE BAG,
MASENO, KENYA
wecare518@gmail.com
+254797680921

RE: SUBMISSION OF MEMORANDA ON THE ASSEMBLY AND DEMONSTRATIONS
BILL, (National Assembly Bill No. 28 of 2024)

Introduction:

WeCare Youth Organization and Community Led Solutions are registered youth-led community-based organizations working to build and strengthen the capacity of citizens, especially young people, women and people with disabilities to meaningfully and effectively participate in the country's governance and development processes through public participation and drive public policy innovation to build a free, just and sustainable community.

The organizations co-convenes the Maseno University and Great Lakes University of Kisumu Transparency and Integrity Clubs, which are platforms for students to engage in the country's

governance processes while ensuring that youth voices are amplified and considered in the decision-making processes.

Background

WeCare Community-based organization and the undersigned have analyzed The Assembly and Demonstration Bill 2024, herein referred to as 'The Bill' presented before the Senate on 26th April 2024. Following the provisions as set out in the Bill, it is duly noted that the main objective of this bill is to prevent assembly and demonstrations.

Having reviewed the clauses within The Bill, especially those that will have a direct impact on youths and women, we have the following justified recommendations to the proposed amendments.

1. Definition of Demonstrations;

Recommendation; Considering the context of Article 37 and the Public Order Act, the definition of "demonstration" should be refined to ensure alignment with constitutional guarantees and legal regulations.

Justification:

1. **Alignment with Constitutional Rights:** The revised definition explicitly acknowledges the peaceful and unarmed nature of demonstrations, consistent with Article 37.
2. **Legal Compliance:** It incorporates the need to adhere to legal requirements (e.g., permits and notifications), aligning with the Public Order Act.
3. **Clarity and Scope:** It should maintain the emphasis on public display and influence but ensures it is framed within the bounds of legal and constitutional frameworks.
4. **The definition should aim to balance the right to demonstrate with the need for maintaining public order, reflecting both constitutional rights and legal obligations.**

2. Section 11

Recommendation:

The clause, as currently formulated, imposes broad prohibitions that may inadvertently infringe upon constitutional rights and fail to adequately address the practical realities of public protests. It is recommended that the clause be reviewed and reconsidered to ensure that it does not

disproportionately limit the fundamental rights of individuals to engage in peaceful assembly and expression, and to better account for concerns related to police conduct and protest safety.

Justification:

1. Potential Infringement on Constitutional Rights:

- Freedom of Expression: The prohibition against inciting hatred or violence through various forms of expression (e.g., banners, placards, speech) must be carefully balanced with the right to freedom of expression as enshrined in Article 37 of the Constitution of Kenya. While prohibiting incitement to violence is essential, overly broad restrictions can lead to unjust limitations on legitimate forms of protest and criticism. Ensuring that prohibitions are specific to incitement that is likely to lead to imminent violence helps protect the constitutional right to free speech.

2. Ambiguity in Prohibitions:

- Definition and Scope: The terms "calculated or likely to cause or encourage violence" are inherently vague and open to interpretation, which can lead to inconsistent enforcement and potential abuse. The legal standards for what constitutes incitement to violence should be clearly defined to prevent arbitrary application and to safeguard against the suppression of legitimate dissent. Legal clarity is crucial to protect the rights of individuals while maintaining public order.

3. Identification and Privacy Concerns:

- Disguises and Masks: Prohibiting the wearing of disguises or masks that obscure a person's face raises significant concerns about privacy and safety, particularly in contexts where demonstrators may face risks of identification and retaliation, especially in instances of police brutality. While identification is important for security, the prohibition must be weighed against the potential for misuse and the chilling effect on the right to protest. Measures should be in place to address legitimate safety concerns while respecting individual rights.

4. Uniforms and Impersonation:

- **Resemblance to Security Forces:** The prohibition against wearing apparel resembling security force uniforms must be carefully crafted to avoid penalizing demonstrators who may wear such attire as a form of symbolic expression rather than to impersonate security personnel. The clause should ensure that it specifically targets intentional impersonation rather than broadly penalizing similar attire used for legitimate protest purposes.

5. Weapon Possession and Safety:

- **Offensive Weapons:** The prohibition against possessing offensive weapons should be clearly aligned with lawful and practical considerations. The definition of "offensive weapons" needs to be precise to prevent undue restriction of demonstrators' rights, especially in the context of protecting themselves from potential aggression. The regulation should focus on preventing real threats while avoiding excessive limitations on the right to assemble and demonstrate.

6. Context of Police Conduct:

- **Police Brutality and Teargas Use:** In light of issues such as police brutality and the use of teargas during protests, the clause should be mindful of the environment in which demonstrations occur. It is critical that the legal framework does not disproportionately penalize demonstrators while overlooking the need for accountability and regulation of law enforcement practices. Provisions should be in place to address and mitigate risks associated with both demonstrators and law enforcement.

3. Section 7 (2)

Recommendation; The current notification requirements for convening assemblies and demonstrations should be revisited to balance the need for public safety with the protection of constitutional rights. Flexibility in the notification period, privacy considerations for organizers, and adjustments to time and site requirements are crucial to ensuring that the legal framework supports rather than hinders the effective exercise of the right to peaceful assembly. By addressing these concerns, the regulations can better accommodate the needs of both organizers and authorities, facilitating lawful and effective public demonstrations.

Justification;

1. Timing of Notification:

- **Three to Fourteen-Day Window:** The requirement to notify the regulating officer between three and fourteen days before the proposed date of an assembly or demonstration may unduly constrain the ability of individuals and groups to respond to urgent issues or rapidly changing circumstances. This timeframe may be too rigid, especially in dynamic social or political contexts where quick mobilization is necessary. A more flexible notification period could accommodate the practical needs of protest organizers while still allowing authorities to prepare for public order and safety.

2. Detailed Information Requirements:

- **Personal Details and Addresses:** Requiring the full names and physical addresses of the organizers and marshals may raise privacy concerns and create barriers for individuals who wish to organize protests but are concerned about their safety or privacy. The necessity of disclosing such personal information should be carefully evaluated to ensure it does not deter individuals from participating in or organizing peaceful demonstrations. Alternative methods for verifying organizer identity without compromising privacy could be considered.

3. Specificity of Site and Route:

- **Detailed Site and Route Information:** The requirement to specify the exact site and, for public processions, the proposed route, while aimed at ensuring public safety and order, may also place a significant burden on organizers. In cases where the site or route may change due to unforeseen circumstances, the rigidity of this requirement could be problematic. Flexibility in updating or modifying the site or route, within certain parameters, should be allowed to accommodate changes while still maintaining communication with authorities.

4. Balancing Security and Freedom:

- **Overly Prescriptive Requirements:** The level of detail required in the notification process should be balanced against the need to protect the rights of individuals to assemble and demonstrate. While authorities need adequate information to ensure public safety and manage logistics, overly stringent requirements may inhibit the

ability of citizens to organize and participate in protests. The notification process should be streamlined to ensure that it is not used as a tool to suppress or unduly control peaceful assembly.

4. Section 14

Recommendation;

This prohibitions should be reviewed to ensure they do not unduly infringe upon the right to peaceful assembly, address concerns related to police conduct, and consider the balance between security and civil liberties.

Justification:

1. Prohibition on Convening with Inadequate Notice:

- Broad Interpretation of "Inadequate Notice": The prohibition against convening a public assembly with "no or inadequate notice" may be overly broad and could unduly restrict the ability to organize protests, particularly in urgent situations where rapid mobilization is necessary. The interpretation of what constitutes "inadequate" notice may vary, potentially leading to arbitrary enforcement. Additionally, the requirement for notice should consider the nature of the event and practical challenges faced by organizers.
- Impact on Spontaneous Protests: The ability to respond quickly to emerging issues is crucial for democratic engagement. Limiting or penalizing spontaneous or urgent assemblies could suppress timely and important expressions of dissent.

2. Failure to Comply with Conditions:

- Overly Stringent Conditions: Prohibiting non-compliance with conditions imposed on assemblies could lead to undue restrictions, especially if conditions are unreasonable or excessively restrictive. The imposition of conditions should be balanced to avoid infringing upon the fundamental right to assemble peacefully.
- Discretion and Abuse: The enforcement of conditions should be transparent and fair. Conditions should be clearly defined and justified to prevent misuse or abuse

by authorities. The clause may inadvertently empower arbitrary enforcement if conditions are not reasonable or clearly communicated.

3. Obstruction or Resistance to Law Enforcement:

- Scope of "Hinder, Interfere, Obstruct, or Resist": The prohibition against hindering or obstructing law enforcement officers, conveners, marshals, or others needs to be carefully defined to avoid overly broad interpretations. This could potentially criminalize non-violent forms of dissent or interaction with authorities.
- Concerns about Police Conduct: Given concerns about police brutality and the use of teargas during protests, the clause could unfairly penalize individuals who are resisting or protesting against excessive force or abuse by law enforcement. The legal framework should provide safeguards to ensure that resistance is not construed as criminal when it is a response to unlawful actions by authorities.

4. Possession of Weapons or Objects:

- Definition of "Weapon" and "Object": The prohibition on possessing weapons or objects unlawfully during assemblies must be carefully defined to avoid overly broad restrictions that could infringe upon the right to peaceful assembly. The definition should differentiate between dangerous weapons and benign objects that might be misclassified.
- Context of Self-Defense: In some instances, demonstrators may possess items for legitimate self-defense or symbolic purposes. The prohibition should consider the context of possession and ensure that it does not disproportionately penalize peaceful protesters.

Consideration of Police Conduct:

- Police Brutality and Teargas Use: The clause must account for scenarios where demonstrators might face aggressive tactics from law enforcement. Protections should be in place to ensure that resistance to unlawful or excessive use of force is not unduly criminalized. Provisions should be included to address and rectify instances of police misconduct without infringing upon demonstrators' rights.

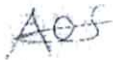
CONCLUSION

In conclusion, the Assembly and Demonstration Bill, while aimed at regulating public assemblies and demonstrations, requires careful reconsideration to ensure it aligns with constitutional protections and addresses practical concerns effectively. The Bill's provisions, including those related to notification requirements, detailed documentation, timing constraints, and prohibitions on conduct, must strike a balance between maintaining public order and respecting fundamental democratic rights.

By addressing these concerns, the Assembly and Demonstration Bill can be refined to better protect civil liberties while ensuring effective regulation of public order. A balanced approach will support the exercise of fundamental rights, promote transparency, and foster a fair environment for both organizers and participants in public assemblies and demonstrations. Ensuring that the Bill is consistent with constitutional principles and responsive to the practical realities of protest will enhance its efficacy and legitimacy in upholding democratic values.

This memorandum has been submitted in good faith and it's our prayer that it will be put into consideration.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read "AOS", is located below the closing text.

Arnold S. Osano- Executive Director, WeCare Youth Organization



The Kenya Alliance of Resident Associations

MEMORANDUM

COMPUTER MISUSE AND CYBERCRIMES (AMENDMENT) BILL, 2024

PRESENTED TO

THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON
COMMUNICATION, INFORMATION AND INNOVATION

SUBMITTED BY

KENYA ALLIANCE FOR RESIDENT ASSOCIATIONS (KARA)

Contacts:

Henry Ochieng

CEO

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Introduction

The Kenya Alliance for Resident Associations (KARA) is an umbrella organization of resident associations in Kenya and brings together over 800 members spread across the cities, municipalities and urban areas in Kenya. KARA has established itself and contributed effectively to attainment of better service delivery through policy advocacy and influence; capacity building; community mobilization and networking; formation and facilitation of the work of Resident Associations across the country; mediation and dispute resolutions. KARA brings together Resident Associations under one umbrella in order to strengthen their voice, facilitate their participation in service delivery agenda thereby enhancing social accountability both at the County & National level.

KARA's vision is a Kenya where every neighbourhood has an acceptable quality of life and mission is to empower resident associations to transform neighbourhoods through inspired social action, resulting in improved quality of life for residents.

The Kenya Alliance for Resident Associations (KARA) reviewed the Computer Misuse and Cybercrimes (Amendment) Bill, 2024, which is before the National Assembly, and facilitated consultative forum with non-state actors involved promotion and protection of human rights, civic space, digital rights and community dialogue and engagement. The Association support the initiative by Hon. Mohamed Aden Daudi, MP. Whereas the Bill provides for mechanism for enhancing the Computer Misuse and Cybercrimes Act, Cap 79C, there are several areas in the Bill that KARA proposes to be amended in order to strengthen the legislative measures proposed. In addition, KARA proposes further amendments to the Act that should be included in the Bill as highlighted below:

1. CLAUSE 2

THAT Clause 2 of the Bill be amended as follows-

- (a) In paragraph (a) by deleting the proposed word "or" appearing after the word "devise"
- (b) In paragraph (b) by inserting the words "password" after the word after the word "address"

Justification

The proposed word "or" in paragraph changes the meaning of definition of the word "access" since it would imply. With the proposed amendment under paragraph (a), the definition of the term "Access" would read as follows: *"access means gaining entry into or intent to gain entry by a person through a program or a devise or to a program or data stored in a computer system and the person either....."*. This changes the meaning of the clause since the purpose of using a devise is to gain access to a program or data.

Passwords are considered as personal data that is linked to an identifiable person since it is used to access a person's personal accounts or information. Therefore, they should be included in the definition of identity theft.

2. CLAUSE 3

THAT Clause 3 of the Bill be amended by deleting the proposed paragraph (ja) and substituted therefor the following-

(ja) coordinating public and private sector entities in monitoring and preventing computer misuse through the propagation of criminal activities such as child pornography, production, supply or sale of narcotic drugs and controlled psychotropic substances, terrorism, organized crime or violent extremism as prescribed under relevant laws in Kenya.

Justification

The proposed paragraph (ja)-

- (a) provides for the powers of the National Computer and Cybercrimes Coordination Committee under section 6 of the Act, whereas section deals with functions of the committee and not its powers. Consequently, its misplaced in its form and legislative flow
- (b) Would be prone to abuse since it does not provide for mechanism for proving that such criminal activities before placing websites and related applications offline. The due process should be followed in all circumstances

The issue of rendering websites and other applications inaccessible should be as a consequence of a criminal conviction under the relevant laws.

3. INSERTION OF NEW CLAUSE 3A

THAT the Bill be amended by inserting a new clause 3A as follows-

3A. The Principal Act is amended in section 5 (1) by inserting new paragraphs (k) and (l) as follows-

- (k) the Data Commissioner;
- (l) the chairperson of the Kenya National Commission on Human Rights; and
- (m) the Chairperson of the National Council for Persons with Disability.

Justification

Data privacy and protection as well as human rights are closely related to computer misuse and cybercrimes in terms of breaches and enforcement processes. Therefore, there is need to have the Data Commissioner and Chairperson of Kenya National Commission on Human Rights as members of the Committee. In addition, it would be important to include persons

with disability in the committee to ensure that issues affecting persons with disability are integrated in control of computer misuse and cybercrimes.

4. CLAUSE 4

THAT the Bill be amended in Clause 4 by inserting the words “inflict any self-physical harm or injuries” after the word “suicide”

Justification

It would be appropriate to include other negative effects that may affect an individual as a result of cyber harassment such as physical harm.

5. CLAUSE 6

THAT Clause 6 of the Bill be deleted.

Justification

The proposed Clause 42A is misplaced as it seeks to provide for a crime whose subject matter falls under the Kenya Information and Communication Act, Cap 411A. Specifically, matters SIM Cards are covered under sections 27A, 27B, 27C and 27D. Consequently, control of SIM-Card Swap should be covered under this part dealing with SIM-Card registration and management. In addition, provision of unauthorised SIM-Card Swap as a crime under the Computer Misuse and Cybercrimes Act creates an opportunity for the same offence being regulated under 2 Acts, which would be a miscarriage of justice.

6. INSERTION OF NEW CLAUSE 7

THAT the Bill be amended by inserting a new clause 7 as follows–

7. The Principal Act is amended by inserting a new section 46A as follows–

46A. (1) Where a person has been convicted of an offence related to child pornography, production, supply or sale of narcotic drugs and controlled psychotropic substances, terrorism, organized crime or violent extremism as prescribed under relevant laws in Kenya, and the person was using a computer system, website or digital device in contravention with this Act, the court may order the person to–

- (a) remove the content or materials from the computer system, website or digital device;
- (b) close or deactivate the computer system, website or digital device; or
- (c) such other orders as the court may deem appropriate.

(2) Notwithstanding subsection (1), an authorised person may, where the person believes that a person is committing crimes described under subsection (1) using a computer system, website or digital device, the authorised officer may apply to court for order that the person–

- (a) removes the content or materials from the computer system, website or digital device;
- (b) closes or deactivates the computer system, website or digital device; or
- (c) such other orders as the court may deem appropriate.

Justification

The proposed section 46A will address the need to close websites and applications that are used to commit the crimes described under clause 3 of the Bill. The proposed section 46A will ensure that there is fair and accountable administrative system in regard to closing websites or digital applications.

7. PENALTIES

THAT the Act be amended by reducing all fines stipulated under section 14 (Unauthorised access), 15 (Access with intent to commit further offence), 22 (false publications), 23 (publication of false information), 27 (cyber harassment) and any other section whose fine is above Ksh. 500,000 or imprisonment of more that 2 years to the extent that such penalties relate to individuals, from the stipulated amounts to not more than Ksh. 200,000.

Justification

The Act has been used to target persons who have been deemed to be critics of government or persons in positions of power. This has resulted in the Act being deemed to focus less on control of computer misuse and cybercrimes but more on political control and eventual curtailment of freedom of speech, media and expression. Hefty fines such as Ksh. 5, 10 or 20 million would be deemed to inhibit such freedoms by instilling fear due to misinterpretation of the law.

Contacts:

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COMMENTS ON THE ASSEMBLY AND DEMONSTRATION BILL 2024

Description of the Bill	Proposal
<ul style="list-style-type: none"> The Assembly and Demonstrations Bill, 2024, sponsored by Mbeere North MP Geoffrey Ruku outlines the provisions for how an assembly is conducted to safeguard public property and protect lives. 	<ul style="list-style-type: none"> Eliminate the discretionary authority of the police to unilaterally reject a protest - The provision permitting police officers to decline a protest based on perceived legal violations or imminent danger grants excessive discretionary power. This could result in the arbitrary denial of the right to protest, as outlined in Article 37 of the Constitution. The decision-making process should be transparent, objective, and free from personal or political bias, guided by a clear set of predetermined guidelines. That way, rejection will be based on law and not perception.
	<ul style="list-style-type: none"> Abolish the imposition of conditions on protests - The proposed law grants authorities the power to impose conditions if they believe a protest poses a threat to public safety or property. While preserving public order is crucial, this power risks infringing on the right to free expression and peaceful assembly if applied excessively or without justification. Moreover, the law does not set any clear limits on the nature or extent of conditions authorities can impose
	<ul style="list-style-type: none"> Uphold principles of individual responsibility - Holding all participants collectively accountable for property damage during protests is overly broad and risks punishing peaceful demonstrators who had no involvement in violent or destructive acts. The law should ensure that only those directly responsible for such actions are held accountable, safeguarding the rights of non-violent participants.
	<ul style="list-style-type: none"> Lift the restrictions on placards, banners, and chants - The prohibition of certain placards, banners, or chants based on culture, race, sex, language, or religion needs to be carefully balanced. While hate speech must be regulated, overly broad restrictions could infringe on the freedom of speech protected under Article 33 of the Constitution. This fundamental right must be upheld, especially during peaceful demonstrations.
	<ul style="list-style-type: none"> Reconsider the appointment of marshals - While appointing marshals to ensure peaceful protests is a helpful idea, it places an excessive burden on organizers. The responsibility for maintaining public order should primarily rest with the state, not protest organizers, ensuring the right to assemble is not unduly restricted.

① DOC

18/02/25

09 September 2024

The Clerk of the National Assembly
PO Box 41842-00100
Nairobi
cna@parliament.go.ke



Sent via e-mail

Re: The Assembly and Demonstration Bill (National Assembly Bill No. 28-- of 2024)

② Mr. Abenayo Wasike, HoD

Pls bring to the attention of the Dept. Comm. on Admin. & Internal Security. JM 18/02/25

Background

Katiba Institute (KI) is a research and litigation institution established in 2011 with the mission of supporting the implementation of Kenya's 2010 Constitution, helping to resist efforts to undermine that Constitution, and generally assisting in developing a culture of constitutionalism in Kenya.

Mr. Mugona
Pls TNA
Wasike
18/2/25

KI received a request to comment on and discuss the Assembly and Demonstration Bill 2024. This letter represents KI's comments on the Bill.

Summary and General Remarks

The bill is yet another state's attempt to frustrate the democratisation journey. Although the bill is described as regulating the right to assemble and demonstrate, it kills the right.

It increases the cost of organising a protest and employs both the deterrent effects of criminal and civil liability. Further, the possibility of criminal sanctions prevents, discourages, and inhibits freedom of assembly. Additionally, the 'limitations' imposed in the Bill do not distinguish between adult and minor conveners. This means that children – who may not even know about the notice requirements in the Act or have the resources to adhere to it – are indiscriminately held criminally liable if they fail to give notice before convening a demonstration or assembly.

Item	Reference	Comment/observation	Recommendation
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1	<p>Section 6 (2)</p> <p>The Right contemplated in subsection (1) may not be exercised by any person where such assembly or demonstration may affect</p> <p>(a) Public Safety</p> <p>(b) Public Order, and</p> <p>(c) the protection of the rights and freedoms of other persons</p>	<p>Whereas section 6(1) of the bill states that the purpose of the section is to limit the right to peaceful assembly and demonstration, the provision goes beyond limiting and extinguishes the entire right. Article 24 commands that a right can be limited, but a limitation cannot derogate from its core essentials</p> <p>The use of the word may not be exercised, suggesting that the right to demonstrate cannot be enjoyed in those three circumstances. This violates article 24 (2)(c)- see Peter Solomon Gichira v Independent Electoral and Boundaries Commission & another [2017] Eklr Constitutional Petition 234 of 2017 at para 72</p>	<p>1 Deletion of the provision; or</p> <p>2. An amendment listing procedural requirements in exercising the right in the listed situations but not wholly denying the exercise of the right and</p> <p>3 An amendment removing the vague terms but listing down easily understood situations or descriptions of those situations.</p>
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		<p>The court, for instance, struck down sections 78 and 87 of the Labour Relations Act for violating Article 24(2)(c), the provisions provided that there ‘shall be no strike in essential services’- <i>Kenya Ferry Services Limited v Dock Workers Union</i>.</p> <p>Second, the section violates Article 24(1), which requires a right to be limited by law. In this instance, law does not mean the existence of legislation alone; it means that the law limiting the right must be clear and specific (sufficient precision). It cannot be vague. The employment of vague terms fails the test, and courts have nullified legislation using the void for vagueness doctrine—see <i>Geoffrey Andare v</i></p>	
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		<p><i>Attorney-General & 2 others</i> [2016] eKLR.</p> <p>The terms public safety and public order are overly vague and ambiguous. The bill does not even attempt to define them.</p> <p>As such, the bill's enforcers have much discretion in determining what constitutes public safety and public order.</p>	
2.	<p>Section 7(7)</p> <p>The assembly organiser must be present throughout the assembly and shall assist the police in maintaining peace and order.</p>	<p>There is a constitutional principle that constitutional rights conferred without express limitation should not be cut down by reading implicit restrictions into them (<i>S v Zuma and Others</i>)</p> <p>Article 37 does not impose any obligation on a rights holder other than being peaceful and unarmed. It is the sole responsibility of the state to maintain peace and order. (Onguto J in Agnes Wacera Macharia & another v Raila Amolo)</p>	Deletion of the requirement

		Odinga & 2 others [2017] eKLR para 30)	
3.	Section 7(8) Authorisation of regulating officer or any police officer to stop or prevent the holding of a demonstration or assembly	<p>The provision is problematic because even after complying with the procedural requirements under the bill, the police officer is empowered to stop the demonstration if it poses a present or imminent danger of breaching the peace or public order.</p> <p>The provision uses vague terms whose interpretations are subjective and dependent on the enforcer. Further, contrary to the rule of law and good governance, the police are granted excessive and unchecked discretionary powers.</p>	Deletion of the provision
4.	Section 7(9) and (10)-creation of an offence	Failure to obey an order stopping a demonstration is an offence, and anyone who participates in such a	<ul style="list-style-type: none"> - Removal of the criminal sanctions; or - Amendment to ensure that the

		<p>demonstration commits the offence of participating in an unlawful assembly and is liable to imprisonment for one year.</p> <p>The provision is problematic on two levels. First, it removes the magistrate's discretion by fixing the sentence to one year. Despite the mitigation, the magistrate is bound by the provision.</p> <p>Second, the restriction is not proportional and has a chilling effect on the right. For this reason, Article 24 requires the state to adopt the least restrictive measure when limiting a right.</p> <p>The language of human rights does not favour the imposition of criminal sanctions to limit a right. Most citizens, for instance,</p>	<p>magistrate has discretion.</p> <p>- Reducing the penalties.</p>
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		<p>will avoid exercising their rights in fear of criminal sanctions.</p> <p>The offence, if any, can be punished by using fines.</p> <p><i>(Cyprian Andama v Director of Public Prosecutions & another; Article 19 East Africa (Interested Party) [2019] eKLR)</i></p>	
5.	<p>Section 8- Empowering the regulating officer to impose unnamed conditions</p>	<p>The regulating officer is empowered to impose conditions in a matter concerning public safety, maintenance of public order, and protection of rights.</p> <p>Again, the regulating officer is left to define what these matters entail. It is simply based on what they interpret the terms to mean.</p> <p>Besides being vague, the regulating officer is empowered to impose any</p>	- Deletion

		<p>condition; those powers are unlimited. This offends Article 10.</p> <p>Further, the regulating officer is empowered to impose costs of cleaning up that may arise. This condition implicitly imposes obligations on the right holder that are not in the Constitution.</p>	
6.	Section 10- Onerous obligations on the convenor	<p>The provision imposes an obligation on the convenor of an assembly to appoint marshals and take steps to ensure that the assembly or demonstration always proceeds peacefully.</p> <p>This is an unknown obligation in the Constitution. It is onerous to expect every convenor to hire marshals and ensure that the</p>	

		<p>demonstration is peaceful.</p> <p>The state cannot transfer its obligation to maintain peace and order to rights holders.</p> <p>Second, the provision does not consider the position of ‘spoilers’ in the demonstration. A convenor cannot be expected to control all the demonstrators and <i>spoilers</i>.</p>	
7.	Section 11- Prohibitions during an assembly or demonstration	<p>The provision infringes on the freedom of expression under Article 33. Whereas the provision might be intended to prevent incitement and threats to violence, the provision uses terms subject to the interpretation of the enforcer.</p> <p>The phrase any words ‘that are calculated or likely to cause or encourage violence against any person or group of persons’ is not only broad but leaves much discretion</p>	Delete this section.

		to the enforcers. It is the enforcer who determines if the speech is offensive.	
8.	Section 12- Liability for damage	<p>The provision makes the convenor and participants in a demonstration jointly and severally liable for any property damage. Further, it is insufficient proof that the person or organisation forbade an act of the kind in question.</p> <p>Creating an excessive burden on right holders severely limits exercising a right.</p> <p>Additionally, the civil liability threat creates a chilling effect on the right.</p>	Delete this section
9.	Section 14- offences and penalties	<p>The provision creates a general criminal provision. The offences are punishable by either a fine not exceeding one hundred thousand shillings, imprisonment for a period not exceeding one year, or both.</p>	Delete this section

		<p>The principle of proportionality would favour the retention of the fine but the deletion of the imprisonment.</p> <p>The criminalisation of the failure to give notice is an unjustifiable violation of the right to demonstrate. The HRC, for instance, held in <i>Kivenmaa v Finland</i> Communication No. 412/1990 UN Doc CCPR/C/50/D/412/1990 (1994) at para 9.2;</p> <p><i>Sergei Androsenko v Belarus</i> Communication No 2092/2011 UN Doc CCPR/C/116/D/2092/2011 (2016) at para 7.6;</p> <p><i>Margarita Korol v Belarus</i> Communication No 2089/2011 UN Doc CCPR/C/117/D/2089/2011 (2016) at para 7.6;</p> <p><i>Bakhytzhan</i></p>	
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		<p><i>Toregozhina</i> v <i>Kazakhstan</i></p> <p>Communication No 2137/2012 UN Doc CCPR/C/112/D/2137/ 2012 (2014) at para 7.6.</p>	
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Note: In 2018, the South African Constitutional Court rendered an essential decision on interpreting the right to demonstrate and assemble. The Court in *Mlungwana and Others v The State and Another* [2018] ZACC 45 considered whether criminalising the failure to give notice is a justifiable limitation of the right to demonstrate. The court answered the question in the negative.

Conclusion

For the above reasons, we believe the Bill should be fundamentally revised to reflect our proposed amendments. In doing so now, we expect that the Bill will allow for the enjoyment of the right to peaceably and unarmed assemble.

On behalf of Katiba Institute:

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NABWIRE OBARA ADVOCATES

SUBMISSIONS TO THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY

ON THE ASSEMBLY AND DEMONSTRATION BILL NO. 28 OF 2024

BY: Ms. Isabella Nabwire Obara for Nabwire Obara Advocates

DATE: 18th February, 2025

"The impulse for new legislation should no longer be the pure political will, to push a draft through parliament. Careful considerations of the intent, the tools, effects, and side-effects of the draft should be taken instead" - **PROFESSOR DR. ULRICH KARPEN, UNIVERSITY OF HAMBURG**

We make these submissions:-

Acknowledging that peaceful protests can contribute to the full enjoyment of civil, political, economic, social and cultural rights,

Recognizing that peaceful protests can make a positive contribution to the strengthening of democratic systems and to democratic processes,

Acknowledging that peaceful protests can occur in all societies, including protests that are spontaneous, simultaneous, unauthorized or restricted;

Reaffirming that everyone has the right to life, liberty and security of person within the context of an assembly,

Stressing the need to ensure full accountability for human rights violations or abuses in the context of peaceful protests,

Stressing therefore that everyone must be able to express their grievances or aspirations in a peaceful manner, including through public protests, without fear of reprisals or of being intimidated, harassed, injured, sexually assaulted, beaten, arbitrarily arrested and detained with trumped up charges preferred against them, tortured, killed or subjected to enforced disappearance ,

Stressing that peaceful protests should not be viewed as a threat, and therefore I am encouraging the Kenyan government to engage in an open, inclusive and meaningful dialogue when dealing with peaceful protests and their causes.



NABWIRE OBARA

ADVOCATES

1. INTRODUCTION

1.1 These submissions are presented in **opposition** to the Assembly and Demonstration Bill No. 28 of 2024 (hereinafter "the Bill"). These submissions are based on our Memorandum submitted on 9th of September, 2024.

It is our firm position that the Bill, in its current form, contravenes the **Constitution of Kenya, 2010**, particularly **Article 37**, which guarantees the **right to peaceful assembly, demonstration, picketing, and petitioning**.

1.2 The Bill also fails to align with **Kenya's international human rights obligations** under:

- The **International Covenant on Civil and Political Rights (ICCPR)**, which Kenya became a **State Party to in 1972**, thereby committing to act in **good faith and not to defeat the objectives and purpose of the treaty**.
- The **African Charter on Human and Peoples' Rights**, ratified by Kenya on **23rd January 1992**, creating a binding obligation for the state to adopt **legislative or other measures** to give effect to the Charter's provisions, including the right to peaceful assembly under **Article 11**.

1.3 The **Public Order Act (CAP 56)**, which this Bill seeks to amend, is an **archaic colonial-era statute** that fails to reflect modern democratic principles. Any amendment must align with the current Kenyan **constitutional values, international treaty obligations, and best practices in public order management**.

1.4 We, therefore, urge this Committee to **reject the Bill in its entirety** and support a **fresh, consultative legislative process** that adequately protects the **right to peaceful assembly** while ensuring responsible **public order management**.

2. CONTEXTUAL BACKGROUND

2.1 Kenya's Historical and Legal Context on Protests

2.1.1 Kenya's transition from a **single-party state to a multi-party democracy** has been marked by **increased civic activism and public participation**. The **Constitution of Kenya, 2010**, enshrined key freedoms, including the **right to assemble**, which can only be limited under **Article 24**.



NABWIRE OBARA ADVOCATES

2.1.2 The **Public Order Act (CAP 56)** was enacted in **1948** to suppress dissent rather than regulate assemblies democratically. Despite **20 legislative attempts to amend it**, the law remains **outdated** and in urgent need of reform that aligns with modern democratic governance.

2.2 Lessons from Past Protests

2.2.1 Kenya has witnessed **significant human rights violations** during protests, of the public, protesters and law enforcement officers including:

- The **2007, 2013 and 2017** post-election protests, where **excessive force by police** led to injuries and fatalities.
- The **March–July 2023 and June–August 2024 demonstrations**, where there was **torture, extra judicial executions, arbitrary arrests, detentions, and the improper use of less-lethal force.**

2.2.2 The **failure to implement international guidelines** such as the **UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** continues to exacerbate tensions between law enforcement and assembly participants.

3. KEY OBJECTIONS TO THE BILL

3.1 Definitions and Violation of Constitutional Rights

3.1.1 The absence of **clear definitions** creates ambiguity, making it difficult for participants to understand their legal protections and obligations. It also gives law enforcement unchecked discretion in determining what constitutes an **"unlawful"** versus **"lawful"** assembly. These definitions are crucial to ensuring that participants of any assembly are protected from undue interference and that law enforcement acts within the bounds of legality and proportionality.

3.1.2 The **Bill fails to provide definitions for key forms of assemblies**, including but not limited to: **peaceful assembly, Processions, Strikes, Sit-ins, Flash mobs, Rallies, Meetings and Vigils.** Further, other definitions such as "police" should be reconsidered.

3.1.3 The **right to peaceful assembly** under **Article 37 of the Constitution** is not a **privilege but a fundamental right.** The Bill seeks to **convert this right into a regulated privilege** by replacing "notification" with a **mandatory "permission" requirement** under Section 7(2).



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3.1.4 This provision violates **Kenya's obligations under international law**, particularly **Article 21 of the ICCPR** and **Article 11 of the African Charter**, which **protect the right to peaceful assembly and prohibit arbitrary restrictions**.

3.1.5 In **Kivenmaa v. Finland (1994)**, it was ruled that **requiring prior permission for peaceful assemblies unjustifiably restricts fundamental rights**. Kenya must align its laws with this precedent and recognize that **mere notification, not permission, should be required**. Further, not all forms of assemblies require notification e.g. Spontaneous assemblies.

3.2 Overregulation, Procedural Barriers, and Criminalization of Peaceful Protests

3.2.1 The Bill introduces **disproportionate restrictions** and **punitive measures** that discourage civic participation, including:

- **Sections 7-9: Excessive discretion** given to **regulating officers** to impose arbitrary conditions on assemblies, leading to **potential abuse and selective enforcement**.
- **Section 8: Expansive powers to order dispersal** of assemblies **without clear guidelines**, increasing the risk of **unjustified force by security agencies**.
- **Section 12: Criminal liability for organizers** based on the conduct of participants, violating the **principle of individual criminal responsibility**.

3.2.2 **Section 9** improperly introduces an additional procedural barrier by requiring that a **convenor may apply to the High Court to vary conditions set by a regulating officer**. This additional legal step **creates unnecessary bureaucracy, delays, and potential costs** for protest organizers. Importantly, it **has no specified timeline**, meaning the High Court could delay the ruling indefinitely, thereby **defeating the purpose of spontaneous and time-sensitive protests**.

3.2.3 **The Bill is silent on the use of force, especially less-lethal weapons** during public order management. It **fails to acknowledge** the basic principles on the use of force and firearms by law enforcement officers.

3.2.4 **Section 11** introduces a **general prohibition on paraphernalia** used during protests. This provision **requires rethinking**, as **paraphernalia (e.g., placards, banners, megaphones, and flags)** are **essential tools in communication** and are **integral to the essence of most assemblies**. Preventing their use undermines the



NABWIRE OBARA

ADVOCATES

very purpose of protests, which is to pass messages effectively to authorities and the public.

3.2.5 **Section 14 of the Bill fails to strike the critical balance** required in public order management between **rights and responsibilities**. It fails to consider the **significant discretion enjoyed police officers during assembly management**, without addressing the **negotiation or de-escalation strategies**. Furthermore, it does not provide **any room for enforcement mechanisms** to ensure **accountability** in the actions of law enforcement officers.

4. RECOMMENDATIONS

4.1 Reject the Bill in Its Entirety

4.1.1 The Bill **fails to align with constitutional guarantees and international treaty obligations**. It should be **withdrawn**, and a **fresh, drafting and consultative process** initiated.

4.2 Recognize Modern and Spontaneous Assemblies

4.2.1 Future legislation should explicitly protect digital protests and spontaneous assemblies, ensuring they receive the same legal safeguards as planned demonstrations.

4.3 Strengthen Oversight Mechanisms

4.3.1 The Bill must include provisions for **independent monitoring** of public assemblies by:

- The Independent Policing Oversight Authority (IPOA), to oversee **law enforcement conduct**.
- The Press, Human rights bodies, and civil society organizations, to ensure **transparency and accountability**.

4.4 Benchmarking with Other Countries

4.4.1 The Departmental Committee should **benchmark with jurisdictions such as South Africa, Canada, Sweden, the United Kingdom, and Germany**, which have **progressive legislative frameworks for public order management**.



NABWIRE OBARA

ADVOCATES

4.4.2 These countries have laws that:

- **Highly regulate the use of force by law enforcement** to prevent excessive force during protests.
- **Encourage collection of intelligence during planning, structured dialogue between regulating officers and organizers during planning** to prevent unnecessary confrontations.
- **Promote a "measured" approach to de-escalation** rather than arbitrary dispersal, ensuring that the state's response to assemblies is **proportional and lawful**.

4.4.3 Kenya should adopt best practices from these nations to create a legal framework that respects the right to protest while maintaining public order.

5. CONCLUSION

5.1 The **Assembly and Demonstration Bill No. 28 of 2024** is **unconstitutional, disproportionate, and outdated**. It **criminalizes peaceful assembly, grants excessive discretion to law enforcement, and ignores modern civic participation methods**.

5.2 We urge the Departmental Committee to **reject the Bill in its entirety** and initiate a **broad-based consultation** to develop legislation that balances the **right to peaceful assembly** with legitimate **public order concerns**.

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Managing Partner,
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NPS Comments on the Assembly and Demonstration Bill (National Assembly Bill No. 28 of 2024)

The National Police Service is established under Article 243 of the Constitution and further given effect and operationalized by the National Police Service Act, No. 11A of 2011. The Service comprises of the Kenya Police Service, the Administration Police Service, the Directorate of Criminal Investigations established under Section 28 of the Act and the Internal Affairs Unit established under Section 87 of the Act. The National Police Service is one of the National Security Organs established under Article 239 of the Constitution of Kenya and it is a national service that functions throughout the republic of Kenya.

The primary object of the National Police Service is to promote and guarantee national security in accordance with the Constitution of Kenya while in compliance with constitutional standards of human rights and fundamental freedoms.

The National Police Services fully supports the enjoyment of the Bill of rights to the greatest extent possible while also appreciating that a right can be limited as in the instant case in order to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others pursuant to Article 24 of the Constitution.

We therefore support the Bill with the following amendments:

1.	Clause	Proposal	Justification
2.	Section 2 provide the Interpretation of "Excluded Meeting"	<p>"excluded meeting" means—</p> <p>(a) any meeting convened and held exclusively for the lawful purposes of any public body; or</p> <p>(b) any meeting of the members of any registered organisation, whether corporate or unincorporate, convened in accordance with the constitution of the organisation and held exclusively for the lawful purposes of that organisation;</p> <p>(c) any meeting of the members of any trade union convened and held exclusively for the lawful purposes of that trade union;</p> <p>(d) any meeting convened and held exclusively for social, cultural, charitable, educational, commercial or industrial purposes;</p> <p>(e) any meeting of the organs of a political party, convened in accordance with the constitution of the party and held exclusively to discuss the affairs of the party;</p> <p>(f) impromptu "meet-the-people" tours by Members of Parliament and councillors;</p>	To Provide for the Definition of excluded meetings
3.	Section 2. Interpretation	Delete the word "police" , and replace with the phrase "police officer" to read -means an Administration police officer or a Kenya police officer and includes officers of the Directorate of Criminal investigations and police reservist as defined under the National	To adopt the definition of the National Police Service Act.
4.	Section 2. Interpretation	"Cabinet secretary" means the Cabinet Secretary for the time being responsible for national Security	To provide for the definition of the Cabinet Secretary
5.	Section 2. Interpretation	Insert a new interpretation to read as follows: "offensive weapon" means	To Provide for the definition of

		any article made or adapted for use for causing injury to the person, or capable of being so used, or intended by the person having it with him for such use, and includes any clubs, panga, simi rocks, projectiles or similar weapon.	“offensive weapon”
6.	Section 2. Interpretation	Delete the number "100" immediately after the word "more than" and replace with "10" to read: means any assembly, concourse or procession of more than ten (10) persons as defined in the Public Order Act.	To retain the current definition of public gathering to mean a gathering of 10 or more persons .
7.	Section 2. Interpretation	Insert and define the word “ Restricted areas ” Means any area, place or premises, it appears to the Cabinet Secretary to be necessary or expedient in the interests of public safety and public order that special precautions should be taken to prevent the entry of unauthorized persons, he may, by order published in the <i>Gazette</i> , declare such area, place or premises to be a restricted area	To provide for the definition of Restricted area
8.	Insert a new section 11 (2)	Where a person at, or in relation to, a meeting or a procession conducted pursuant to a notification (a) acts in a disorderly manner for the purpose of preventing the transaction of the business for which the public meeting /public procession assembled; (b) obstructs the free passage of any ambulance, fire engine or vehicle belonging to the National Police Service or the Kenya Defense Force or, otherwise than in the manner and to the extent	To provide for the certain offences related to conduct of demonstration and obstruction of certain classes of vehicles.

		<p>authorized by the notification relating to that meeting or procession, impedes or disrupts the use by members of the public in general of any road; or</p> <p>(c) incites other persons to do so, the person shall be guilty of an offence and shall</p> <p>be liable on conviction to a fine not exceeding Ksh100,000 or to imprisonment for a term not exceeding 2 years or to both.</p>	
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KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

ADVISORY ON

THE ASSEMBLY AND DEMONSTRATION BILL, 2024

SUBMITTED TO

OFFICE OF THE CLERK OF THE NATIONAL ASSEMBLY

DATED: 17TH FEBRUARY 2025

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A. ABOUT THE COMMISSION

1. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution with a broad mandate to promote a culture of respect of human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the United Nations *Paris Principles* on the establishment and functioning of independent national human rights institutions commonly referred to as the Paris Principles and as such enjoys an “A” status accreditation.
2. The National Commission under **Article 249** of the Constitution has a mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the Constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through the issuance of advisories.
3. It is in this regard that the National Commission submits its comments on the Assembly and Demonstration Bill, 2024 (National Assembly Bills No 28) that is sponsored by Hon. Geoffrey Kiringa Ruku. Part A of the advisory flags out important General observations concerning the Bill whilst Part B highlights specific areas of amendments. The last Part C (or annexe) provides some comparative practices.

B. GENERAL COMMENTS

4. The right to Assembly, demonstration, picketing and petition is secured under Article 37 of the Constitution of Kenya in the following terms:

“Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities”.
5. The Kenya National Commission would like to acknowledge that the right to assembly, demonstration and picketing secured under Article 37 of the Constitution, is not one that cannot not be limited. It is one of the rights that can be limited. However, any such limitation to the exercise of this right must:
 - a. **Satisfy the requirements of Article 24 of the Constitution of Kenya on limitation of rights and fundamental freedoms; and**
 - b. **Meet the regional and international human rights standards**

Regional and International Standards

6. The rights to freedom of association and assembly are fundamental rights that should underpin all democratic societies in which individuals can freely express their views on all issues concerning their society.¹ Indeed, the right to freedom of peaceful assembly is a fundamental key right enabling the full enjoyment of civil, political, economic, social and cultural rights.
7. Kenya is a state party to various treaties and conventions guarding the right to freedom of assembly. Regionally, the African Charter protects the right to express opinions, to free association and the right to assemble freely with others, under Articles 9, 10 and 11 respectively. The right to freedom of assembly is also guaranteed under Article 8 of the African Charter on the Rights and Welfare of the Child. The right to freedom of assembly is also guaranteed under Article 20(1) of the Universal Declaration of Human Rights, Article 21 of the International Covenant on Civil and Political Rights, and Article 15 of the International Convention on the Rights of the Child. Similar protections are secured under Article 8 of the International Covenant on Economic, Social and Cultural Rights, Article 7(c) of the Convention on the Elimination of All Forms of Discrimination against Women as well as International Labour Organization (ILO) Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise.
8. The *International Covenant on Civil and Political Rights* (ICCPR) secures the right to peaceful assembly under Article 21 in the following terms:

" The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."
9. It has been explained by special mandates that whilst the freedom of peaceful assembly and the freedom of association are not absolute and may be limited, *such limitation must be the exception and not the rule*. The General Comment No. 27 (1999) of the Human Rights Committee on freedom of movement cautions that, **"in adopting laws providing for restrictions ... States should always be guided by the principle that the restrictions must not impair the essence of the right ... the relation between right and restriction, between norm and exception, must not be reversed"**.²
10. Furthermore, General Comment No. 31 (2004) of the Human Rights Committee on the

¹ African Commission on Human and Peoples' Rights.

² 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai' adopted by the Human Rights Council Twentieth session on 21 May 2012(A/HRC/20/27) para. 16.

nature of the general legal obligation imposed on States parties to the Covenant provides that, "where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights".³ The report goes on to stress that, *"only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 of the Covenant on Civil and Political Rights) or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law (art. 5) should be deemed unlawful."*⁴

11. The African Charter on Human and people's Rights (ACHPR) guarantees the right to Assembly under Article 11 as follows:

"Every individual shall have the right to assemble freely with others. The exercise of this rights shall be subject only to necessary restrictions provided for by the law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others".

12. According to the **Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights** (African Commission)⁵;

- a. Where States enact laws on freedom of assembly, those laws shall aim primarily at the facilitation of the enjoyment of the right.
- b. Legislation and regulations on assemblies shall be drafted and amended on the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society.
- c. The right to freedom of assembly applies to all individuals, groups, peoples, unregistered and registered associations, and others.
- d. Everyone has the right to assemble freely with others. No one shall be compelled to participate in an assembly.
- e. The right to freedom of assembly applies to meetings on private as well as public property.
- f. The right to freedom of assembly extends to peaceful assembly. An assembly should be deemed peaceful if its organizers have expressed peaceful intentions, and if the conduct of the assembly participants is generally peaceful: 'Peaceful' shall be interpreted to include conduct that annoys or gives offence as well as conduct that

³ 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai' adopted by the Human Rights Council Twentieth session on 21 May 2012(A/HRC/20/27) para. 17

⁴ 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai' adopted by the Human Rights Council Twentieth session on 21 May 2012(A/HRC/20/27) para. 18

⁵ The Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights (2017) adopted at the Commission's 60th Ordinary Session held in Niamey, Niger, from 8 to 22 May 2017; [Accessible here.](#)

temporarily hinders, impedes or obstructs the activities of third parties. Isolated acts of violence do not render an assembly as a whole non-peaceful.⁶

13. When it comes to **notification regime**, the Guidelines on Freedom of Association and Assembly stipulate that, participating in and organizing assemblies is a right and not a privilege, and thus its exercise does not require the authorization of the state. A system of prior notification may be put in place to allow states to facilitate the exercise of this right and to take the necessary measures to protect public safety and rights of other citizens. Further, that, ‘A notification regime requires that the presumption is always in favor of holding assemblies, and that assemblies not be automatically penalized, through dispersal or sanction, due to failure to notify. Moreover, the lack of notification shall not be understood to make an assembly illegal.’⁷

14. Further Guidelines with regard to notification regime include that;⁸

- a. Notification procedures shall not be burdensome.⁹
- b. A failure to respond by the authorities shall be taken as acknowledgement that the assembly may go ahead along the lines proposed.
- c. Should the authorities receive notification from multiple groups aimed at holding assemblies in the same space at the same time, efforts shall be made to facilitate multiple concurrent assemblies. Where this is impossible, an impartial and reasonable means shall be found to allocate the space.
- d. No notification need be submitted for small assemblies, assemblies unlikely to generate disturbance or spontaneous assemblies. Spontaneous assemblies include assemblies that occur as immediate reactions to events, and planned assemblies that necessarily occur within a tighter deadline than that required relative to notification.

15. The **Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa**¹⁰ provides for the following General principles Governing the Right to Assemble freely with others:

- i. Everyone has the right to assemble freely with others. The right to assembly may be exercised in a number of ways, including through demonstrations, protests, meetings, processions, rallies, sit-ins, and funerals, through the use of online platforms, or in any other way people choose.¹¹

⁶ Para 70, Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples’ Rights.

⁷ Para 71, Guidelines on Freedom of Association and Assembly.

⁸ See Paras 72-79 Guidelines on Freedom of Association and Assembly.

⁹ See Para 72 on the details including that the notifications should be free of charge.

¹⁰ The Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa Accessible at <https://achpr.au.int/en/soft-law/guidelines-policing-assemblies-law-enforcement-officials-africa>

¹¹ Para. 1.1 Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa

- ii. Limitations imposed by the State Party on the right to assemble freely with others must:¹²
 - a. Be in accordance with limitations on the right to assemble in terms of regional and international human rights standards. This includes the right to life; freedom from discrimination; equality of, and equal protection before, the law; the right to dignity and freedom from torture and other ill treatment; the right to liberty and security of the person; the right to have a cause heard; freedom of movement; freedom of conscience; the right to privacy; the right to receive and disseminate information and to express opinions; the right to free association; and the right to participate freely in public affairs and equal access to public services, as guaranteed by the African Charter on Human and Peoples' Rights, and other relevant international human rights instruments; and
 - b. Comply with the principles of legality; be in pursuit of a legitimate interest as defined by regional and international human rights instruments; be a necessary and proportionate measure to achieve that end within a democratic society; and adhere to the rights of freedom from discrimination and equality before the law.
 - c. Participants and organisers of assemblies shall exercise the right to assemble with due respect to the right of others and in compliance with the laws in place which themselves should be consistent with the regional and international human rights standards.

- iii. According to the **African Commission Guidelines on the Policing of Assemblies**, the enactment, interpretation, implementation and enforcement of national laws and regulations governing the right to assemble freely with others must:
 - a. Require law enforcement responses that favour the presumption of the exercise of the right to assemble freely with others by all persons involved, or believed to be involved, in the assembly; Be consistent with regional and international human rights standards;
 - b. Recognise that limitations and restrictions on the right to assembly freely with others must be treated as an exception, and that any limitations or restrictions imposed must be necessary and proportionate, and be:
 - Consistent with the principles of legality, necessity, proportionality, freedom from discrimination and equality before the law ..., as well as regional and international human rights standards ...;
 - Decided on a case-by-case basis; and
 - Reviewable by competent, independent and impartial administrative and judicial authorities, in both law and practice, within a reasonable period of time.

¹² Para 1.2 Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa

Other Guidelines provided in policing assemblies include (but not limited) to the following:

- iv. Law enforcement officials as representatives of the State are under an obligation to respect and protect the right to assembly.
- v. As a general rule, the military should not be used to police assemblies and must only be used in exceptional circumstances and only if absolutely necessary. Military personnel deployed to assembly operations must be subordinate to, and under the command of, the police authorities; be fully trained, in and be bound by, regional and international human rights standards, as well as any national law enforcement policy, guidelines and ethics;
- vi. The primary role of law enforcement officials in policing assemblies is to ensure the safety of the public and to safeguard human rights of all persons. This role should be clearly articulated in national legislative and regulatory instruments governing assemblies.
- vii. Law enforcement agencies have an obligation to promote access to information and should make available, in the public domain, information relevant to the policing of assemblies. Such information should include all regulations, standing orders and instructions, codes of conduct and information about chain of command and operational decision-making.
- viii. All action taken by law enforcement officials during the management of assemblies where participants are not acting peacefully must satisfy the requirements of legality, necessity, proportionality, freedom from discrimination and equality before the law, and accord with regional and international human rights standards.
- ix. Law enforcement officials should be trained to differentiate between individual and group behaviour, and to identify and remove specific persons identified as acting in an unlawful or violent manner while continuing to facilitate the enjoyment of the right to assemble freely with others for all other persons.
- x. Crowd control strategies, such as containment, should be implemented with precaution, be lawful and proportionate, and never amount to collective detention. Containment tactics must allow for exit routes for assembly participants and observers who want to leave the assembly.
- xi. The use of force is an exceptional measure. In carrying out their duties, law enforcement officials shall, as far as possible, apply non-violent methods before resorting to the use of force and firearms. Force and firearms may only be used if other means of achieving a legitimate law enforcement objective are ineffective or unlikely to be successful. Law enforcement officials must, as far and for as long as possible, differentiate between peaceful assembly participants and those who engage in violent acts. An assembly should be deemed peaceful if its organisers have expressed peaceful intentions, and if the conduct of the assembly participants is generally peaceful. 'Peaceful' shall be interpreted to include conduct that annoys or gives offence as well

as conduct that temporarily hinders, impedes or obstructs the activities of third parties. Isolated acts of violence do not render an assembly as a whole non-peaceful.¹³

16. According to the **Joint declaration on protecting the right to freedom of peaceful assembly in times of emergencies (September, 2022)**,¹⁴ some of the principles that apply to freedom of assembly are that:

- a. Public emergencies must not be used as a pretext by States to infringe the right to freedom of peaceful assembly or to repress civil society activists. Blanket bans on assemblies almost always constitute a disproportionate restriction of this right, and should be avoided.
- b. The peacefulness of an assembly must be presumed; isolated violent acts do not render an assembly as a whole unpeaceful or unlawful.
- c. Measures taken by States during public emergencies must comply with international human rights law requirements and standards, including the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.
- d. Emergency measures may be imposed only in exceptional circumstances, where there is a serious, imminent danger that threatens the life of the nation.
- e. States should refrain from using legitimate institutional mechanisms in an arbitrary, selective or abusive manner against certain individuals or groups in order to limit or restrict their right to freedom of peaceful assembly, of association, and of expression on matters of public interest.
- f. Assemblies which have the explicit, unequivocal purpose of advocating national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, or promoting war propaganda, should be prohibited. Where an individual or small group is engaged in such action in the context of an assembly, States should take targeted action against that individual or small group only.

17. The National Commission thereby urges that the substance of the proposed Assembly and Demonstrations Bill must conform to the above-mentioned guidelines and standards, if it is to pass the muster.

Requirements of Article 24 of the Constitution on limitation of rights and fundamental freedoms

18. The Proposed law must satisfy the requirements set out under Article 24 of the Constitution of Kenya in order to pass the test of constitutionality. The provisions stipulate as follows:

¹³ Para.21.1.2

¹⁴ Accessible at <https://achpr.au.int/index.php/en/news/press-releases/2022-09-15/joint-declaration-protecting-right-freedom-peaceful-assembly-times>.

Limitation of rights and fundamental freedoms

(1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- (a) the nature of the right or fundamental freedom;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

(2) Despite clause (1), a provision in legislation limiting a right or fundamental freedom—

- (a) in the case of a provision enacted or amended on or after the effective date, is not valid unless the legislation specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation;
- (b) shall not be construed as limiting the right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and
- (c) shall not limit the right or fundamental freedom so far as to derogate from its core or essential content.

(3) The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied.

(4) ...

(5) ... “

19. The Supreme Court of Canada in the case of *R v Oakes*¹⁵ stipulated the four part test include: Whether the government action limiting a right pursues a legitimate objective of sufficient importance to justify the limitation?

- i. Whether the government action limiting a right pursues a legitimate objective of sufficient importance to justify the limitation?
- ii. Whether the means used are suitable to achieve the objective?
- iii. Whether the means are necessary, meaning they minimally impair the limited right while considering alternative ways to achieve the same objective?
- iv. Whether the beneficial effects of the limitation on the right outweigh its detrimental effects?

¹⁵ *R v Oakes* (1986), Supreme Court of Canada.

20. The superior courts in Kenya have severally examined the doctrine of limitation of rights and fundamental freedoms and applicability of Article 24 of the Constitution of Kenya. For instance, in the case of *Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & 10 others* the court was guided by the test illustrated in the Oakes case whereby it provided further guidelines when it comes to limitation of rights. The court held that the first test requires that the limitation be one that is prescribed by law. It must be part of a statute and must be clear and accessible to citizens so that they are clear on what is prohibited. Secondly, the objective of the law must be pressing and substantial, that it must be important to society. The third principle is the principle of proportionality. It asks the question whether the State, in seeking to achieve its objectives, has chosen a proportionate way to achieve the objectives that it seeks to achieve. Put another way, whether the legislation meets the test of proportionality relative to the objects or purpose it seeks to achieve. If a sufficiently important objective has been established, the means chosen to achieve the objective must pass a proportionality test. They must be rationally connected to the objective sought to be achieved, and must not be arbitrary, unfair or based on irrational considerations. Secondly, they must limit the right or freedom as little as possible, and their effects on the limitation of rights and freedoms are proportional to the objectives¹⁶.
21. The principle of proportionality stipulates that all statutes that limit human rights should be proportionate and reasonable¹⁷. The proportionality test also ensures that measures do not alter the essence of the human right in question and only restrict the right to the extent necessary to achieve the legislator's legitimate aims/objectives¹⁸. In the case of *Kenya Human Rights Commission v Communications Authority of Kenya & 4 others*¹⁹, the court held that when it comes to the restriction of human rights a law or measure is justified only when it is proportionate. Similarly, in the case of *Boniface Mwangi v Inspector General of Police & 5 others [2017] eKLR*, the court was faced with the question of Limitation of the right to assemble and demonstrate. The court held that in justifying the limitation of a right of what is reasonable and justifiable depends on the circumstances of each case and Article 24 (1) of the Constitution guides this Court in determining factors to consider when assessing the merits of any prescribed limitation²⁰.
22. Courts have also held that assemblies, picketing and demonstrations which are not peaceful are excluded from the protection of Article 37. In the case of *Ferdinand Ndung'u Waititu & 4 others v Attorney General & 12 others [2016] eKLR* whereby the court held that the constitution has provided claw-backs against the right to assemble and demonstrate. The Claw

¹⁶ *Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & 10 others* (2015) eKLR, Para 212.

¹⁷ Cianciardo J, 'The principle of proportionality: The challenges of human rights' 3(1), *Journal of Civil Law Studies*, 2010, 179

¹⁸ Cianciardo J, 'The principle of proportionality', 184

¹⁹ *Kenya Human Rights Commission v Communications Authority of Kenya & 4 others* (2018), eKLR, para 71.

²⁰ *Boniface Mwangi v Inspector General of Police & 5 others* [2017] eKLR, para 52.

back states that demonstrators, picketers and petition-presenters must do so “*peaceably and unarmed*”. If they consist of violence to or intimidation of the public, then the assembly or the demonstration ought to be stopped. Likewise, participants in assemblies, picketers and demonstrators must not be armed. Weapons as well as defensive or protective contraptions which breed or stimulate aggression ought not to be possessed by the demonstrators or picketers²¹.

23. In view of the regional and international provisions governing limitations of rights specifically the right to assembly, as well as Article 24 of the Constitution of Kenya on instances when rights and fundamental freedoms may be limited, the National Commission is of the view that whilst the objective of the statute as encapsulated in the long title and under Clause 6 of the Bill passes the legitimate objective test, is reasonable and justifiable in a just and democratic society, the means of achieving the same as set out in the other specific provisions of the Bill, serve to derogate from the core content of the rights to freedom of assembly contrary to Article 24(2)(c) of the Constitution of Kenya and international human rights standards. Moreover, the provisions do not meet the test of proportionality and are unreasonable in a just and democratic society. The application of certain provisions as shall be outlined shortly pose a serious threat to the enjoyment of the right. Overall, the provisions effectively serve to stifle the freedom of assembly rather than facilitate it:

Protection of all types of assemblies

24. The Bill recognizes that assemblies include both planned and organized assemblies as well as unplanned and spontaneous assemblies. However, it only protects planned and organized assemblies and penalizes unplanned and spontaneous assemblies, primarily through the obligatory notification process. Section 7 (2) of the Bill obligates any person planning to hold an assembly to notify a regulating officer at least three days and at most fourteen days before the proposed day of the assembly. Failure to do so allows a regulating officer to disperse and assembly and attracts an imprisonment term of one year under the Penal Code. Section 14 (1) (a) prohibits a person from convening a public assembly with no or adequate notice. A person who contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding one year, or to both.
25. Spontaneous assemblies are just as important as planned assemblies are and may be carried out in reaction to emerging events. The requirement for organizers of such assemblies to submit a notification of their planned assembly would curtail their freedom of assembly and would limit the purpose and effect of their gathering. Regional and international mechanisms have

²¹ *Ferdinand Ndung'u Waititu & 4 others v Attorney General & 12 others* [2016] eKLR, para 32.

also called on State Parties to protect spontaneous assemblies by not overly restricting them. The **Human Rights Committee in General Comment No. 37** also notes that “spontaneous assemblies, which are typically direct responses to current events, whether coordinated or not, are equally protected under article 21.”

Liability for damage

26. Cause 12 (1) of the Bill severely restricts freedom of assembly in general. It contravenes Article 37 as well as Article 24 (2)(C) of the Constitution which prohibits the enactment of legislation that limits a right or fundamental freedom so far as to derogate from its core or essential content. It places liability on every person and organization participating in an assembly for damage caused to property during the assembly or demonstration. Furthermore, Sub-clause 2 protects that person or organization from liability for damage if they prove that they did not permit or connive at the act that caused the damage; or if the act or omission did not fall within the scope of the objectives of the assembly; or if they took reasonable steps to prevent the act or omission that caused the damage. Furthermore, forbidding the act is not sufficient proof against liability.

Sub-clause 2 does not offer enough protection as it would be extremely difficult to prove one's innocence. The provision almost turns the criminal procedure on its head in term of presumption of innocence and that the burden of prove as being on the State authorities. Under section 107 of the Evidence Act, when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. The proviso in question seeks to shift the burden of proof from the prosecution to the organizers, which should not be the case since it's the prosecution alleging that the organizers are the ones that direct, authorize, and encourage acts of violence at protests. Based on the evidence rule then this proviso is not only not justifiable but also illegal.

27. Essentially, the provision undermines freedom of assembly by discouraging organizers and participants from taking part in an assembly if they are held responsible for damages caused during the assembly. Assemblies are likely to attract rogue third parties who may cause destruction to property. Peaceful demonstrators and organizers should not be penalized for their actions. Instead, the State should fulfil its positive obligation to ensure peaceful assemblies by protecting such assemblies from such elements.

28. The **United Nations Special Rapporteur on the rights to freedom of peaceful assembly** and of association has emphasized that organizers of peaceful assemblies should never be held liable for the unlawful behaviors of others. The principle of individual liability of participants

should be upheld, notably due to the presumption of peacefulness of the assembly.²² The African Commission has also stated that “liability shall be personal. Neither the organizers nor fellow participants of a public assembly shall be subjected to sanctions of any kind on the basis of acts committed by others.”²³

29. Organizers cannot be held responsible for the actions of each and every person attending a given meeting. In the event that rogue individuals with bad intent use such meetings as an opportunity to damage property, loot businesses and cause chaos, it is the responsibility of the Police to maintain law and order.¹⁰ This burden cannot be implicitly shifted to assembly organizers by holding them liable to pay compensation. Such a provision sends a chilling effect to would-be exercisers of the freedom of assembly and will only serve to curtail democratic expression and space.

Power to stop/prevent an assembly on grounds of present or imminent danger

30. Clause 8 (b) of the Bill infringes on freedom of assembly. It permits a regulating officer or any police officer to stop or prevent the holding of an assembly if the assembly poses a present or imminent danger of a breach of peace or public order. The State has a positive obligation to protect the right of individuals to assemble or demonstrate. Where there is a present or imminent danger of a breach of peace or public order, the State should take measures to address it by protecting those participating in an assembly from violent third parties, rather than stopping or preventing the holding of an assembly or demonstration. Furthermore, the provision does not define what “present or imminent danger” is and therefore gives discretion to a regulating officer or police officer to define it for themselves and stop an assembly if, in their opinion, it poses a present or imminent danger of a breach of peace or public order. The section should define the cases that fall within the provision.

Obligation to assist the police to maintain peace and order during an assembly

31. Clause 7 of the Bill obligates an organizer of an assembly or demonstration to assist the police in the maintenance of peace and order at the assembly or demonstration. The State bears the primary duty to facilitate and maintain peace and order at an assembly or demonstration. Organizers should not be obligated to assist the police in carrying out their primary duty.

²² Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Para. 78

²³ African Commission on Human and Peoples’ Rights, “Guidelines on Freedom of Association and Assembly in Africa,” available at <https://achpr.au.int/index.php/en/soft-law/guidelines-freedom-association-and-assembly-africa#:~:text=The%20guidelines%20were%20developed%20in,solving%20legal%20problems%20relating%20to> par 101

32. The **Special Mandate on Freedom of Peaceful Assembly** has adopted the expert opinion that, “assembly organizers and participants should not be considered responsible (or held liable) for the unlawful conduct of others...(and together with) assembly stewards, should not be made responsible for the maintenance of public order.” The UN Special Rapporteur has advised that, “such obligation includes the protection of participants of peaceful assemblies from individuals or groups of individuals, including agents provocateurs and counter-demonstrators, who aim at disrupting or dispersing such assemblies.”

Lack of a clear procedure following the submission of a notification of an assembly

33. The Bill contains an evident gap regarding the notification procedure under Clause 7. Once the organizer of an assembly submits a notification of an assembly to a regulating officer in the required form, the Bill is silent on the steps that the regulating officer should take after receiving this notification. Although the right to freedom of assembly does not require authorization, an acknowledgement of receipt of notification will enable the assembly to proceed well. Clause 7 (4) and (5) of the Bill should also provide for the timeline within which the regulating officer shall notify an organizer to avoid unnecessary delays which would impact on the purpose and effectiveness of the assembly. Alternatively, include an express Clause that where no response is received from the regulating authority, then it will be taken as posing no problem and should accordingly proceed.

34. The **Special Rapporteur on the rights to freedom of peaceful assembly and of association** advises that, “once the organizers have notified the designated primary authority of their intention to hold an assembly, a receipt acknowledging that timely notification has been submitted should be provided in an expeditious manner. Should the organizers not hear from the authority prior to the designated time for holding the assembly, it should be assumed that said assembly does not present any problem.” He further reminds that whenever authorities decide to restrict an assembly, they should provide assembly organizers, in writing, with “timely and fulsome reasons” which should satisfy the strict test of necessity and proportionality of the restrictions(s) imposed on the assembly pursuant to legitimate aims.²⁴

Restriction of the place of gathering

35. Clause 13 (b) (1) of the Bill permits the police to restrict an assembly to a place or guide the participants along a route to ensure that vehicular or pedestrian traffic is not interfered with. This curtails freedom of assembly since assemblies need to be within the sight and sound of target audiences. If they are restricted to a certain place, the purpose of the assembly may be limited. Furthermore, the Bill accepts the fact that assemblies could temporarily obstruct the

²⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association Par 48

activities of third parties as well as traffic. The Bill's definition of "peaceful" is any conduct that temporarily hinders, impedes or obstructs the activities of third parties and temporarily blocking traffic. This impugned section however allows a police officer to prioritize vehicular or pedestrian traffic over a lawful assembly. This restriction should be reasonable and justifiable in an open and democratic society. However, it gives discretion to a police officer to redirect assemblies in favour of vehicular or pedestrian traffic.

36. Furthermore, the **Human Rights Council in its resolution 22/10** urged States to facilitate peaceful protests by providing protestors with access to public space and protecting them, where necessary, against any forms of threats, and underlined the role of local authorities in this regard.²⁵ The Inter-American Commission on Human Rights has also stressed that "the competent institutions of the State have a duty to design operating plans and procedures that will facilitate the exercise of the right of assembly, [including] rerouting pedestrian and vehicular traffic in a certain area."²⁶

Conditions on Cost of Cleaning Up

37. Under Clause 8 (2) (b) of the Bill, one of the conditions set for holding an assembly or demonstration is payment costs of cleaning up which may arise out of the holding of the assembly or demonstration. The State has the primary duty to facilitate an assembly. This includes any clean-up costs arising out of the holding of an assembly. This duty should not fall on the assembly organizers.

Definition of offensive weapon

38. Clause 11 (e) of the Bill prohibits a person from possessing any offensive weapon at an assembly or demonstration. The Bill should define what an "offensive weapon" is.

²⁵ Human Rights Council resolution 22/10, para. 4

²⁶ OAS/IACHR, Report on Citizen Security and Human Rights, 31 December 2009 (OEA/Ser.L/V/II), para. 193.

C. SPECIFIC COMMENTS ON THE ASSEMBLY AND DEMONSTRATION BILL, 2024

CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
<p>2 Interpretation</p>	<p>Definition of “demonstration” and “place of assembly”.</p> <p>The Bill only protects assemblies in physical places. It defines a “place of assembly” as including, “a place at or through which it is proposed the public assembly, demonstration, picketing and presentation of petitions to public authorities will stop or pass”.</p>	<p>Amend the definitions to recognise online assemblies and petitions.</p>	<p>The Bill should take into account the evolving nature of assemblies. Traditionally, assemblies have taken place physically. However, with the evolution of the digital space, more and more assemblies and petitions are being carried out online.</p> <p>Also, in line with regional and global practices/Guidelines:</p> <p>In its General Comment No. 37 (2020) on the right to peaceful assembly, the Human Rights Committee notes that, “although the exercise of the right of peaceful assembly is normally understood to pertain to the physical gathering of persons, article 21 protection also extends to remote participation in, and organization of, assemblies, for example online.”²⁷</p> <p>Similarly, the African Commission on Human and Peoples’ Rights opined that the right to assembly may be</p>

²⁷ Human Rights Committee, “General Comment No. 37 (2020) on the right of peaceful assembly (article 21),” available at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful> par 13

CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
			<p>exercised in a number of ways including through the use of online platforms.²⁸</p> <p>The Joint declaration on protecting the right to freedom of peaceful assembly in times of emergencies (September, 2022)²⁹ reaffirms the important role played by the Internet, social media and other information and communication technologies in providing space for individuals and groups to mobilize and to organize assemblies, especially when physical assemblies may face legitimate restrictions due to the emergency situation.</p> <p>In line with this, the Bill should expressly state that assemblies could also take place online.</p>
2- Interpretation	Definition of “Peaceful”:	Add a proviso to the definition that states that the fact that an assembly may "annoy or offend individuals or groups"	In line with the Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples’ Rights (African Commission). ³⁰

²⁸ African Commission on Human and Peoples’ Rights, “Guidelines on Freedom of Association and Assembly in Africa,” available at <https://achpr.au.int/index.php/en/soft-law/guidelines-freedom-association-and-assembly-africa#:~:text=The%20guidelines%20were%20developed%20in,solving%20legal%20problems%20relating%20to> page 9

²⁹ Accessible at <https://achpr.au.int/index.php/en/news/press-releases/2022-09-15/joint-declaration-protecting-right-freedom-peaceful-assembly-times>.

³⁰ Para. 70; Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples’ Rights (2017) adopted at the Commission’s 60th Ordinary Session held in Niamey, Niger, from 8 to 22 May 2017; Accessible here.

CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
		<p>should not be grounds for restricting it, as long as the conduct remains non-violent.</p> <p>Additionally, that isolated acts of violence do not render an assembly as a whole non-peaceful.</p>	<p>In tandem with the Joint declaration on protecting the right to freedom of peaceful assembly in times of emergencies that inter alia provides: <i>“The peacefulness of an assembly must be presumed; isolated violent acts do not render an assembly as a whole unpeaceful or unlawful”</i>.</p>
<p>6 (2) and 8 (2)(a)</p>	<p>Limitations on grounds of public safety, public order and the protection of the rights and fundamental freedoms of other persons</p>	<p>Strengthen these provisions by adding provisions to clearly delineating the interpretation and use of these limitations. Include a provision that provides guidelines on these three limitations.</p> <p>Alternatively, add a clear proviso that expressly stipulates that in interpreting and application of these limitations, the regulating</p>	<p>The limitations on ground of public safety, public order and the protection of the rights and fundamental freedoms of other persons are justifiable reasons to limit right and they align with regional and international standards.</p> <p>Nonetheless, the limitations as put thereof are overly broad and subject to abuse. Organizers and participants intending to hold a peaceful assembly or demonstration they may still be limited under the guise of public law and order grounds.</p>

CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
		<p>authority shall favour the enjoyment of the freedom of assembly to the greatest extent possible.</p>	
<p>7- Application to hold assembly or demonstration</p>	<p>Clause 7 (2)-(6)- Notification regime</p>	<p>These provisions need to be strengthened by including additional procedural safeguards, such as written notification of any decisions to restrict or prohibit an assembly with clear reasons, as well as the availability of expedited judicial review.</p> <p>Furthermore, it should be clear that the notification is not a request for permission.</p>	<p>In line with the recommendations by the Special Rapporteur and the African Commission's Guidelines on Freedom of Association and Assembly.³¹</p> <p>Refer to paras 13 and 14 highlighted above for some of the provisions that this section could entail.</p> <p>The provisions of Clause 7 of the Bill requires a person intending to hold an assembly or demonstration to notify a regulating officer. Such notice is however not an automatic guarantee that the proposed assembly or demonstration would be held, given that the regulating officer could still decline.³² The Bill thus implies that such notification is equal to a request for permission to assemble or demonstrate.</p> <p>This goes against the good practice that a prior notification should only be required where its purpose is to enable the</p>

³¹ Paras 70-79 Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights (May 2017); [Accessible here](#).

³² Assembly and Demonstration Bill, 2024 Clause 7

CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
		Provisions should provide that no notification need be submitted for small assemblies, assemblies unlikely to generate disturbance or spontaneous assemblies.	State to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others. ³³
	<p>Clause 7 (7)- The provision obligates an organizer of an assembly or demonstration to assist the police in the maintenance of peace and order at the assembly or demonstration: <i>“The organiser of an assembly or demonstration or his authorised agent shall be present throughout the assembly or demonstration and shall assist the police in the maintenance of peace and order at the assembly or demonstration”.</i></p>	Delete the provision	<p>The State bears the primary duty to facilitate and maintain peace and order at an assembly or demonstration. Organizers should not be obligated to assist the police in carrying out their primary duty.</p> <p>The Special Mandate on Freedom of Peaceful Assembly has adopted the expert opinion that, <u>“assembly organizers and participants should not be considered responsible (or held liable) for the unlawful conduct of others...(and together with) assembly stewards, should not be made responsible for the maintenance of public order.”</u></p> <p>The UN Special Rapporteur has advised that, “such obligation includes the protection of participants of peaceful assemblies from individuals or groups of individuals,</p>

³³ Guidelines on Freedom of Peaceful Assembly accessible at <https://www.osce.org/files/f/documents/4/0/73405.pdf> para 4.1

CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
			including agents provocateurs and counter-demonstrators, who aim at disrupting or dispersing such assemblies.”
<p>8 (2) (b)- Conditions for conduct of assembly or demonstration.</p>	<p>The provision allows the regulating officer in a written notice, to specify conditions for the holding of an assembly or demonstration including among other things, a condition relating to the payment of the costs of cleaning up which may arise out of the holding of the assembly or demonstration.</p>	<p>Delete the Clause 8(2)(b).</p>	<p>The requirement is onerous and unreasonable.</p> <p>Furthermore, the Bill has not expressed on how the cost is to be assessed and there is a greater risk of abuse by leaving this to the discretion of the authorities-particularly the regulating officer-to specify such payment conditions.</p> <p>According to the <u>Guidelines on Freedom of Peaceful Assembly</u> developed and published by the Organization for Security and Co-operation in Europe (OSCE), the costs of providing adequate security and safety measures such as traffic and crowd management should be fully covered by the State. The Guidelines provide that:</p> <p><i>“To require assembly organizers to pay such costs would create a significant deterrent for those wishing to enjoy their right to freedom of assembly and might actually be prohibitive for many organizers. As such, imposing onerous financial requirements on assembly organizers is likely to constitute a disproportionate prior restraint.”</i></p> <p>If the police will be present to ensure that assemblers exercise their rights well-at the State’s cost- can the cost of clean-up services be borne by the county governments?</p> <p>Article 20, Law on Public Assemblies of the Republic of Moldova (2008), quoted in the Guidelines, provides as follows:</p>

CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
			<i>(3). Local public authorities cannot charge the organizers for services provided that are services normally provided by subordinated bodies and by publicly administered enterprises</i>
11 (e)- Prohibitions during assembly or demonstration.	The provision states that A person shall not, at an assembly or demonstration- “possess any offensive weapon, otherwise than pursuance of lawful authority”.	Clearly define what constitutes “offensive weapon” in the Kenyan context would stones, sticks, vuvuzelas for instance constitute offensive weapons?	For clarity to avoid ambiguity. The aspect of “unarmed” demonstration is an important element in determining a peaceful assembly, it is important to therefore identify in a schedule- which may not be exhaustive as to what that means.
12(1), (2) - Liability for Damage	12(1). Where, during the carrying on of an assembly Liability for or demonstration, damage to property occurs as a result of the assembly or demonstration, every organisation and every person participating in such assembly demonstration shall, subject to subsection (2), be jointly and severally liable for such damage. (2). It shall be a defence to a claim against a person or organisation contemplated in subsection (1) if such a person or organisation proves-	Delete this provision	Restricts freedom of assembly in general. It contravenes Article 37 as read with Article 24 (2)(c) of the Constitution which prohibits the enactment of legislation that limits a right or fundamental freedom so far as <u>to derogate from its core or essential content</u> . It places liability on every person and organization participating in an assembly for damage caused to property during the assembly or demonstration. Furthermore, Sub-clause 2 turns the rules of criminal procedure and evidentially burden on its head. Under section 107 of the Evidence Act, when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. The proviso seeks to shift the burden of

CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
	<p>(a) that the person or the organisation did not permit or connive at the act or omission which caused the damage in question,</p> <p>(b) that the act or omission in question did not fall within the scope of the objectives of the assembly or demonstration in question and was not reasonably foreseeable, or</p> <p>(c) that the person or the organisation took all reasonable steps within the person's or the organisation's power to prevent the act or omission in question;</p> <p>Provided that proof that the person or the organisation forbade an act of the kind in question shall not by itself be regarded as sufficient proof that the person or the organisation took all reasonable steps to prevent the act in question.</p>		<p>proof from the prosecution to the organizers which is not only not justifiable but also illegal.</p> <p>Peaceful demonstrators and organizers should not be penalized for their actions. Instead, the State should fulfil its positive obligation to ensure peaceful assemblies by protecting such assemblies from such elements.</p> <p>The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association <u>has emphasized that organizers of peaceful assemblies should never be held liable for the unlawful behaviors of others. The principle of individual liability of participants should be upheld, notably due to the presumption of peacefulness of the assembly.</u>³⁴ The African Commission has also stated that "liability shall be personal. Neither the organizers nor fellow participants of a public assembly shall be subjected to sanctions of any kind on the basis of acts committed by others."³⁵</p> <p>Kenya can borrow from the Ghanaian Public Order Act, 1994 whereby the personal liability upon inquiry is</p>

³⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Para. 78

³⁵ African Commission on Human and Peoples' Rights, "Guidelines on Freedom of Association and Assembly in Africa," available at <https://achpr.au.int/index.php/en/soft-law/guidelines-freedom-association-and-assembly-africa#:~:text=The%20guidelines%20were%20developed%20in,solving%20legal%20problems%20relating%20to> par 101

CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
			emphasized in case of damage of property during special events rather than a blanket condemnation of protesters or demonstrators.
13- Powers of the Police during assembly or demonstration.	Provides for the power of police during the conduct of assemblies and demonstrations.	<p>Add an express provision that states that the law enforcement officials have a duty to refrain from using force when policing assemblies; that the use of force should be the last resort, and only when is necessary and proportionate response to the behaviour of the protesters.</p> <p>Furthermore, where some participants are violent, the obligation to facilitate and protect those</p>	In line with the African Commission General Comment 3: The Right to Life (art 4). ³⁶ Also in accordance with Resolution on the Right to Peaceful Demonstrations, ACHPR/Res.281 (LV) 2014. ³⁷

³⁶ Para 12 General Comment 3: The Right to Life (art 4), adopted during the 57th ordinary session of the African Commission on Human and Peoples' Rights, held from 4-18 November 2015, Banjul, The Gambia; accessible at <https://achpr.au.int/en/node/851>.

³⁷ Resolution on the Right to Peaceful Demonstrations, ACHPR/Res.281 (LV) 2014, adopted at the 55th ordinary session held from 28 April to 12 May 2014, Luanda, Angola; accessible at <https://achpr.au.int/index.php/en/adopted-resolutions/281-resolution-right-peaceful-demonstrations-achpres281lv2014>.

CLAUSE & TITLE OF BILL	PROVISION	PROPOSED RECOMMENDATION	JUSTIFICATION
		assembling peacefully remains.	

D: COMPARATIVE APPLICATION TO THE RIGHT TO FREEDOM OF ASSEMBLY, DEMONSTRATION, PICKETING AND PETITION (GHANA; THE UNITED KINGDOM; USA-NEW YORK)

1. GHANA

The freedom of assembly and association is provided under Article 21 of the Ghanaian Constitution which, provides inter alia, that **all persons shall have the rights to freedom of assembly including freedom to take part in processions and demonstrations.**³⁸ Further, the Public Order Act, 1994 makes provisions for governing assemblies also referred to as special event in Ghana.

The Act provides that any person who wishes to hold a **special event** in a public place is required to notify the police of their intention not less than **5 days** before the date of the special event.³⁹ A special event is defined as a procession, parade, carnival, street dance, celebration of traditional custom, outdoor of traditional ruler, demonstration, public meeting and similar event" but does not include religious meetings, charitable, social or sporting gatherings, nor any lawful public entertainment or meeting.⁴⁰

The Act provides that notification of a special event must be in writing and signed on behalf of the organisers of the special event, specifying the place and hour of the special event, its nature, the time of commencement, the proposed route and destination if any, and the proposed time of closure of the event.⁴¹ The notification must be submitted to a police officer not below the rank of Assistant Superintendent or to the police officer responsible for the police station nearest to the location of the proposed special event. Where a police officer notified of a special event has reasonable grounds to believe that the event, if held, may lead to violence or endanger public defence, public order, public safety, public health or the running of essential services, or violate the rights and freedoms of other persons, the police officer **may request the organisers to postpone the special event** to any other date or to relocate the special event. An organiser requested to postpone or relocate the holding of a special event is required to notify the police officer in writing of his willingness to comply within 48 hours of the request.⁴²

Where the organisers refuse to comply with the request or fail to notify the police officer of their willingness to comply with the request to postpone their special event, the **police officer may apply to any tribunal judge or chairperson** for an order to prohibit the holding of the special event on the proposed date or at the proposed location. The judge or chairperson to whom such an

³⁸ Article 21 (1)(d) of the Ghanaian Constitution

³⁹ Section 1 of the Public Order Act, 1994 accessible at

[https://ir.parliament.gh/bitstream/handle/123456789/2040/PUBLIC%20ORDER%20ACT,%201994%20\(ACT%20491\).pdf](https://ir.parliament.gh/bitstream/handle/123456789/2040/PUBLIC%20ORDER%20ACT,%201994%20(ACT%20491).pdf)

⁴⁰ Section 10

⁴¹ Section 1 (2)

⁴² Section 1(5)

application is made may make such orders as she or he considers to be reasonably required in the interest of defence, public order, public safety, public health, the running of essential services or to prevent violation of the rights and freedoms of other persons.⁴³

The Act further mandates every police officer has a responsibility to take such steps as are reasonably necessary in any public place to assist the proper conduct of any special event, by directing the routes of such event to prevent obstruction of pedestrian or vehicular traffic, and to disperse crowds at any special event where they have reasonable grounds to believe that a breach of the peace is likely to occur or, if any breach of the peace has occurred, or is occurring, in order to prevent violence, restore and preserve the peace.⁴⁴ In case of any damage to public property during a special event the organisers, or any other person found to have been responsible for the damage caused, will be liable to pay for the cost of the damage.⁴⁵

Observation from the Ghanaian Case

From the foregoing, the Ghanaian Public Order Act, 1994 contains some notable progressive provisions. For instance, organisers of a public event **no longer have to obtain police permits or authorization**. Only a notice of an intention to hold a special event is to the police. It is also worth noting that the **Act denies the police an automatic power to prevent or deny** the holding of a special event and instead the matter is left to a **competent judicial tribunal** for determination. Additionally, by mandating police officers to assist in the proper conduct of any special event, the Act envisages a **facilitative police role rather than a controlling role**. Finally, **personal liability upon inquiry** is emphasized in case of damage of property during special events rather than a blanket condemnation of protesters or demonstrators.

2. UNITED KINGDOM

The United Kingdom (UK) does not have a codified constitution rather than unwritten one formed of Acts of Parliament, court judgments and conventions.⁴⁶ The UK domesticated the 1950 European Convention on Human Rights, through enactment of the Human Rights Act, 1998. The Convention guaranteed every person the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.⁴⁷

⁴³ Section 1(7)

⁴⁴ Section 2(1)

⁴⁵ Section 3(1)

⁴⁶ See <https://www.rightofassembly.info/country/united-kingdom>

⁴⁷ Article 11 of the European Convention on Human Rights accessible at https://www.echr.coe.int/documents/d/echr/convention_ENG

Regulation of the right to freedom of assembly is provided under the Public Order Act, 1986, which mandates organisers of public processions to **notify the police** area in which the proposed procession would start within **6 days**. The notice must specify the date when it is intended to hold the procession, the time when it is intended to start it, its proposed route, and the name and address of the person (or of one of the persons) proposing to organise it.⁴⁸ Sections 12 and 14 of the Act imposes conditions on public processions and assemblies if a senior police officer reasonably believes that such procession may among others, result in serious public disorder, serious damage to property or serious disruption to the life of the community. The Act further creates an offence relating to failing to comply with set conditions.

It is to be noted that in 2017, while commenting on these provisions of the UK Public Order Act, 1986, the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland remarked as follows:

“Freedom of peaceful assembly is a right and not a privilege and as such its exercise should not be subject to prior authorization by the authorities. State authorities may put in place a system of prior notification, where the objective is to allow State authorities an opportunity to facilitate the exercise of the right, to take measures to protect public safety and/or public order and to protect the rights and freedoms of others. Any notification procedure should not function as a de facto request for authorization or as a basis for content-based regulation.”⁴⁹

The UK enacted a new Public Order Act in 2023, though the 1986 legislation still remains in force. The new legislation increases the police’s ability to restrict and criminalise protest activity by introducing a range of new powers which allow, among other things, for: new and expanded use of stop and search orders that ban people from participating in protests and control their movement/activity/associations; new offences that criminalise certain kinds of protests altogether.⁵⁰ The Public Order Act 2023 introduces the following new criminal offences. The new offences prescribed include:

- Locking-on & being equipped for locking-on –this is where protesters attach themselves to other people, objects, or buildings;

⁴⁸ Section 11 (3) and (5) of the Public Order Act, 1986 accessible at <https://www.legislation.gov.uk/ukpga/1986/64#:~:text=An%20Act%20to%20abolish%20the,provide%20for%20the%20exclusion%20of>

⁴⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland, 2017 accessible at <https://documents.un.org/doc/undoc/gen/g17/158/29/pdf/g1715829.pdf?token=FfojLdMyXKkelpv0T7&fe=true> para 57.

⁵⁰ See <https://www.libertyhumanrights.org.uk/advice-information/public-order-act-new-protest-offences/#page-section-3> and <https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-factsheet>

- Causing serious disruption by tunneling / being present in a tunnel & being equipped for tunneling – where protesters intend or are reckless as to whether creating or being in a tunnel will cause or be capable of causing ‘**serious disruption**’;
- Obstructing major transport works – where on obstructs or interferes with the construction or maintenance of transport works; and
- Interfering with key national infrastructure.

The Public Order Act, 2023⁵¹ introduced Serious Disruption Prevention Orders that allow UK courts to ban affected individuals from being in certain places at certain times; being with particular people; or using the internet in certain ways, and could lead to the individual in question being electronically monitored to ensure compliance. It is especially concerning that such orders can be made against people who have never been convicted of any criminal offence.⁵²

The Secretary of State in 2023 developed the *Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023* by dint of powers conferred under sections 12(12) and 14(11) Public Order Act, 1986. During consideration, the House of Lords Secondary Legislation Scrutiny Committee observed that the ‘*Regulations seek to introduce changes wider than would be necessary solely to create consistency within the statute book and no justification has been advanced for bringing back these wider changes*’.⁵³ The regulations were passed anyway and came into effect on 14th June 2023.⁵⁴

A case was filed at the Royal Court of Justice challenging the Regulations on among other grounds, that the Regulations were ultra vires and were as a result of unfair consultation process. The court in *National Council for Civil Liberties, R (on the application of) v Secretary of State for the Home Department [2024] EWHC 1181 (Admin)* observed that:

‘...“serious” affects how the police can lawfully interpret and apply the connected concepts of “disruption” and “cumulative”. Under section 2A(b) when considering whether a public procession or assembly may result in “serious disruption to the life of the community” a senior police officer “must” take into account all relevant disruption and “may” take into account any relevant cumulative disruption.’⁵⁵

In the end the Court found the Regulations to be *ultra vires* and that although consultation process was voluntarily undertaken, it was however one-sided and not fairly carried out. Consequently, the Court in its judgement, found that the Regulations were unlawful.⁵⁶

⁵¹ Part 2 of the Public Order Act, 2023 available at <https://www.legislation.gov.uk/ukpga/2023/15/enacted>

⁵² See <https://www.rightofassembly.info/country/united-kingdom>

⁵³ See <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2024/1181> para 41

⁵⁴ Ibid para 43

⁵⁵ National Council for Civil Liberties, R (on the application of) v Secretary of State for the Home Department [2024] EWHC 1181 (Admin) accessible at <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2024/1181> para 104

⁵⁶ Ibid para 185

The United Nations High Commissioner for Human Rights condemned the UK's Public Order Act, 2023 as being *incompatible with the UK's international human rights obligations regarding people's rights to freedom of expression, peaceful assembly and association*. The High Commissioner noted as follows:

“This new law imposes serious and undue restrictions on these rights that are neither necessary nor proportionate to achieve a legitimate purpose as defined under international law. This law is wholly unnecessary as UK police already have the powers to act against violent and disruptive demonstrations...

It is especially worrying that the law expands the powers of the police to stop and search individuals, including without suspicion; defines some of the new criminal offences in a vague and overly broad manner; and imposes unnecessary and disproportionate criminal sanctions on people organizing or taking part in peaceful protests”⁵⁷

In the foregoing, it is apparent that governing of the right to freedom of assembly is through the relevant Public Order Acts in both Ghana and the UK. Though the Acts are distinct, they all display elements of homogeneity in relation to among others, advance notification, imposition of conditions and police presence during assemblies. However, the Guidelines on Freedom of Peaceful Assembly developed and published by the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) provides that that restrictions can be imposed during an event (and not only before it takes place) enables the authorities to avoid imposing onerous prior restrictions and to ensure that restrictions correspond with and reflect the situation as it develops. This serves to limit the extent of “time, place and manner” restrictions and other conditions purportedly imposed by a regulatory authority on account of reasonably believing that there will be imminent danger of a breach of the peace or public order.

Regarding the protection of the rights and freedoms of others during assemblies, the Guidelines calls for a proper balance between the freedom to peacefully assemble and the competing rights of those who live, work, shop, trade and carry on business in the locality affected by an assembly. It goes on to state that given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe upon the rights and freedoms of others. This is particularly so given that freedom of assembly, by definition, constitutes only a temporary interference with these other rights.⁵⁸

⁵⁷ Statement of the United Nations High Commissioner for Human Rights accessible at <https://www.ohchr.org/en/press-releases/2023/04/un-human-rights-chief-urges-uk-reverse-deeply-troubling-public-order-bill>

⁵⁸ Guidelines on Freedom of Peaceful Assembly accessible at <https://www.osce.org/files/f/documents/4/0/73405.pdf> para 80

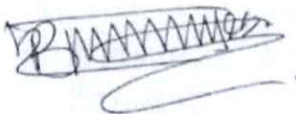
3. USA- NEW YORK

In USA the New York Police Department came up with an approach to address spontaneous demos known as the **NYPD's tiered approach to policing demonstrations** and protests. The four-tiered approach to handling protests is codified in a legal agreement stemming from lawsuits filed against the City of New York during the Black Lives Matter protests in 2020. The approach lays out clear protocols for engaging with protesters, better training for police officers, and specific guidelines for arrests at each tier. It consists of four tiers, each outlining protocols based on the conditions on the ground:

- **Tier 1:** For peaceful protests. The NYPD accommodates protests on streets or sidewalks, with community affairs officers liaising with protesters and patrol officers enforcing traffic laws and directing crowds.
- **Tier 2:** When there is a belief that illegal activity may occur or critical infrastructure might be blocked. Additional officers are stationed nearby in anticipation of potential law enforcement intervention.
- **Tier 3:** Activated with probable cause of a crime. The NYPD deploys sufficient officers to address individuals breaking the law, potentially involving specialized units like the SRG.
- **Tier 4:** When the protest must end. This tier is used if protesters block sensitive locations or if widespread crimes prevent effective de-escalation or targeted enforcement. Dispersal orders are issued to warn the crowd, point out exit points, and identify alternative locations for the protest if feasible.

In the context of Kenya, considerations for the implementation of the tier approach as part of training in the police academy could be made, pursuant to section 79 of the National Police Act (Cap 84), which mandates the National Police Service Commission to formulate a training policy and approve the training curriculum.

SIGNED BY:



Dr. Bernard Mogesa, PhD., CPM

Commission Secretary

+++++THE END+++++



REPUBLIC OF KENYA

National Police Service Commission



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REF: NPSC/1/29/12/VOL.IV (46)

DATE: 31st October, 2024

Clerk of The National Assembly,
Main Parliament Building,
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NAIROBI

**RE: CALL FOR CONSIDERATION OF THE DRAFT ASSEMBLY AND DEMONSTRATION
BILL**

The National Police Service Commission acknowledges receipt of your letter referenced **NA/DDC/AIS/2024/137** dated **17th October, 2024**.

The purpose of this letter is to forward to your office the Commission's comments on the draft Assembly and Demonstration Bill.

Submitted for your consideration

Peter Leley
CS/CHIEF EXECUTIVE OFFICER
NATIONAL POLICE SERVICE COMMISSION

Enclosed

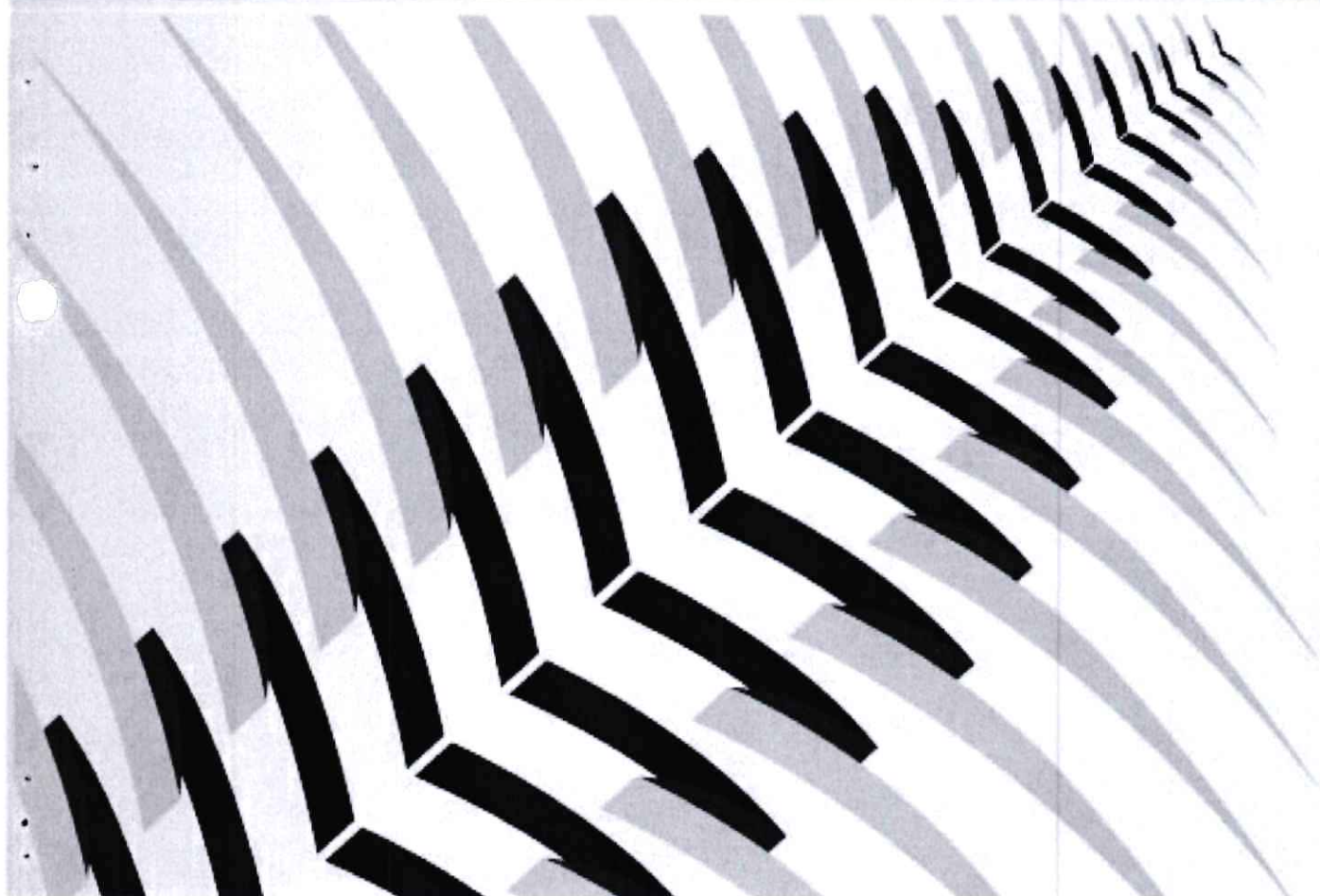


National Police Service Commission



**COMMENTS BY THE
NATIONAL POLICE SERVICE COMMISSION
ON
ASSEMBLY AND DEMONSTRATION BILL
2025**

18TH FEBRUARY, 2024



DRAFT ASSEMBLY AND DEMONSTRATION BILL,2024

PART A – GENERAL COMMENTS

The Public Order Act already offers a comprehensive and well-established legal framework for the regulation of public gatherings and demonstrations within the broader context of maintaining public order.

The Commission believes that amending the Public Order Act to align with international standards is the most efficient and effective way to address current concerns, rather than creating a new and separate Assembly and Demonstration Bill.

Any amendments should be aimed at ensuring clarity, protecting the rights of individuals, protection of police officers and improving accountability in public order management without introducing unnecessary complexity or duplication of existing laws.

PART B – COMMENTS ON THE DRAFT PROVISIONS

Section/Clause	Provision	Proposed amendment	Reasoning	Comments
2(1)	“peaceful” includes conduct that may annoy or give offence to individuals or groups opposed to the ideas or claims that the assembly is seeking to promote and includes conduct that temporarily hinders, impedes or obstructs the activities of third parties and temporarily blocking traffic	Amend the definition of the term “peaceful” to read; “peaceful” includes conduct that may disrupt public peace including but not limited to noise pollution, temporary blockage of traffic and destruction and deprivation of property from	Current provision is too broad and may be misinterpreted to include legal activities such as religious gatherings and funerals	Proposed amendment is intended to avoid an overlap of other fundamental rights guaranteed in the Constitution while limiting the right of assembly, demonstration, picketing and petition

		the beneficial owners during assembly and demonstration		
2 (1)	“public gathering” means any assembly, concourse or procession of more than 100 persons in or on any public road as defined in the Roads Act or any other public place or premises wholly or partly open to air	Amend the definition of the term “public gathering” by substituting 100 persons with 2 or more persons as follows; “public gathering” means any assembly, concourse or procession of 2 or more persons in or on any public road as defined in the Roads Act or any other public place or premises wholly or partly open to air	Limiting a public gathering to more than 100 persons creates a loophole on the number of persons that are subject to the provisions of this statute.	Limitation of public gatherings to more than 100 persons is prone to abuse and creates a lack of clarity on what actually constitutes an Assembly
2 (1)	“police” means the Kenya Police Service	Amend the definition of the term police to read; Police means an Administration Police Officer, Kenya Police	Accord the definition with provisions of Article 243 of the Constitution and section 2 of the National Police Service Act	Statutory Harmony

		Officer and Directorate of Criminal Investigations and reservists		
7	Application to hold assembly or demonstration	The Bill should make provision criteria for restricting assembly and demonstration which must be; <ul style="list-style-type: none"> a. Specific b. Clear c. Lawful 	The provision is a replica of section 5 of the Public Order Act	The provision is repetitive
7(2)	Requires organizers of an assembly or demonstration to provide 3-14 days notice to the regulating officer prior to the intended event.	Amend the clause to reduce the notice period to 2 days	A shorter notification period allows for quicker response to events balancing spontaneity with order	Aligns with international best practices on the right to assemble
7 (8) (b)	Assembly and demonstration	Amend the clause to	The amendment	The amendment

	contrary to the provisions of the section.	restrict use of excessive powers. Particularly when dispersing an assembly or demonstration	allows for oversight, accountability and clear guidelines on use of force	will limit unrestricted use of force and punitive power by officers
7 (9)	Refusal or neglect to obey orders given during and assembly or demonstration.	Amend the clause to provide for personal liability in cases where loss and damage to property arise from acts of violence and vandalism during demonstrations and assembly	This will ensure accountability by persons involved in demonstrations and assembly while protecting the rights of peaceful participants who may not engage in destructive actions	Enforcing personal liability is essential to upholding peace and order during assemblies and demonstrations and ensures that perpetrators of illegal acts are held accountable.
7 (10)	Penalty for involvement in unlawful assembly or demonstration which includes imprisonment for one year and a fine not exceeding one hundred thousand shillings	Amend clause to reduce imprisonment to a maximum period of one month and prioritize fines	Shorter sentence period avoids over-penalizing minor infractions, focusing on corrective rather than punitive measures	Aligns penalties with minor civil infractions rather than criminalizing assembly
8	The regulating officer may, in a written notice, specify conditions for the holding of	Amend the clause to ensure that there is balance public	The provision lays emphasis on security concerns rather than	There is need to balance between public order and

	<p>an assembly or demonstration which conditions shall relate to a matter concerning</p> <ul style="list-style-type: none"> a. Public safety b. The maintenance of public order c. The protection of the rights of the freedoms of persons 	order and individual freedom	constitutional rights	individual freedom
12 (1)	<p>Liability for damage</p> <p>Where , during the carrying on of an assembly or demonstration, damage to property occurs as a result of the assembly or demonstration, every organization and every person participating in such assembly or demonstration shall, subject to subsection (2), be jointly and severally liable for such damage</p>	Amend the provision to cater for unforeseen acts of rogue elements	The provision places all the liability for damages to property arising from demonstrations and assemblies on organizers	Application of the provision may impose unwarranted penalty on peaceful demonstrators
13	Powers of the police during assembly or demonstration	Amend the clause to clearly define safety concerns to be addressed by the provision	The provision grants sweeping powers upon the police to impose conditions on demonstrators,	Public safety concerns seeking to be addressed must be clearly defined

			prohibit demonstrations and to allow or disallow demonstrations	
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NPSC



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Introduction;

The proposed 2024 amendment to the Public Order Act (Cap. 56), sponsored by Mbeere North MP Hon. Ruku Geoffrey Kiringa, requires significant revisions to address its punitive, reactive, and retrogressive nature. The bill, dated April 25, 2024, was submitted to parliament on May 15, 2024. This 20th amendment to the act, which has been in force since June 13, 1950, fails to consider critical contemporary issues in public management and necessary reforms. Given its historical context, it is essential that this amendment be informed by data, cognizant of current global, regional, and national policies and laws, and address contemporary issues. Below are the specific concerns and recommendations for improving the draft bill.

Amending a law typically serves three key purposes:

1. **Updating and Modernizing:** Laws may need to be amended to reflect changes in society, technology, and knowledge. This ensures that the legal framework remains relevant and effective in addressing contemporary issues. For example, as technology evolves, laws related to cybersecurity, data privacy, and digital communications often require updates to cover new developments and threats.
2. **Correcting Deficiencies and Errors:** Sometimes, laws are found to have unintended consequences, ambiguities, or outright errors after they are enacted. Amendments can correct these deficiencies, clarify ambiguous language, and rectify any mistakes to ensure the law functions as intended and provides clear guidance.
3. **Addressing New Circumstances and Challenges:** New situations, challenges, and priorities can arise that the existing law does not adequately address. Amending the law allows legislators to respond to these new circumstances, ensuring that the legal system can effectively manage emerging issues, such as new types of crime, shifts in economic conditions, or evolving social norms.

Historical Background of the Act - Kenya's Old Constitution

Kenya's Independence Constitution designated public order management as the responsibility of the Regional Commissioners of Police, as outlined in Section 165 (2). Regional Assemblies were tasked with establishing committees to address various issues, including those specified in Article 113 (2) (f). Sections 23 and 24 of the Constitution provided for the protection of the freedom of assembly and association, though these rights were subject to significant limitations.

Public order Act Amendment tracker

NO	AMENDMENT	NO	AMENDMENT	NO	AMENDMENT
1	Act No. 26 of 1950,	8	Legal Notice 402 of 1963,	15	2003
2	Act No. 36 of 1950,	9	Legal Notice 87 of 1964,	16	Act No. 12 of 2012,
3	Act No. 7 of 1958,	10	Legal Notice 2 of 1964,	17	Act No. 19 of 2014.]
4	Act No. 10 of 1958,	11	Act No. 3 of 1964,	18	2019,
5	Act No. 23 of 1960,	12	Act No. 19 of 1964,	19	2020,
6	Act No. 54 of 1960,	13	Legal Notice 153 of 1965	20	2024 ***
7	Act No. 53 of 1960,	14	, Act No. 10 of 1997,		

Key comments;

1. Addressing Key Issues in Public Management:

- The bill fails to consider the use of less lethal weapons that cause fatalities and the problem of excessive force. There is a need for a wider range of weapons to allow for proper differentiation.
- Police officers require better training in protest management and de-escalation measures. The bill should include provisions for such training.

2. Questionable Provisions:

- The introduction of cleaning fees and the authority given to regulating officers to impose conditions on protests lacks justification. What research, logic, or data supports this need?

3. Civic Education:

- The 2023 protests demonstrated the need for both the public and police to understand their obligations. Some organizers, marshals, and protesters are unaware of their responsibilities. The bill should incorporate provisions for civic education.

4. Urgent Amendments Needed:

- Clear definitions of a protester and weapon.
- Explicit guidelines for de-escalation protocols.
- Introduction of dialogue during assembly preparations.
- Stricter reporting measures for injuries or fatalities caused by police officers, as outlined in the National Police Service Act, 2011 Schedule 6.
- Expansion of the definition of a police officer to include anyone instructed by the Inspector General to manage public order, including members of the civilian oversight authority.

5. Misplaced Blame on Protesters:

- The bill implies that property damage, injuries, and deaths are caused by protesters. However, the definition of a protester indicates a peaceful and unarmed individual. Anyone causing harm is not a protester and should be dealt with accordingly.

- Research and case law since 2010 show that police have intentionally and negligently caused harm during public order management. This issue must be addressed in the amendment.
6. **Criminalization of Protesters:**
- The bill criminalizes actions and prescribes fines and jail terms solely for protesters. Public order management involves both police and protesters. The bill is one-sided, punitive, reactive, and seeks to muzzle dissent and maliciously prosecute those who do not align with those in power.
7. **Restrictions on Advocacy:**
- The introduction of restrictions on the use of placards, singing, and chanting is absurd. These elements are essential for advocacy, as assemblies and processions aim to be seen and heard. Such measures undermine the fundamental purpose of processions and assemblies.
8. **Problematic Language:**
- The bill's definition of peace is particularly concerning. Among the many definitions of peace in English, law, and public order management policy, this one is uniquely problematic.

Conclusion:

The bill in question fails to address several critical contemporary issues faced by Kenyan protesters. It lacks clear definitions, overlooks fatalities caused by less lethal weapons such as rubber bullets, and inadequately addresses command responsibility and the role of police in inciting violence during protests. Additionally, it neglects the necessity for civilian oversight and the provision of a broad range of less lethal weapons to allow for appropriate differentiation in their use.

In conclusion, the 2024 amendment to the Public Order Act (Cap. 56) requires substantial revisions to address its punitive and reactive nature. Incorporating contemporary issues in public protest management, providing proper training for police, including civic education, and ensuring balanced responsibilities for both police and protesters will improve the bill to better serve society's needs. The current draft is fundamentally flawed and necessitates a comprehensive overhaul to meet these objectives.

ASSEMBLY AND DEMONSTRATION BILL, 2024-MEMORANDUM

Provision	Text	Recommendation	Justification
General	Title "Assembly and Demonstration"	This Bill should not be passed by parliament	The justification for this bill highlights its fundamental flaws, which deviate from key legislative drafting requirements and essential principles of public order management. By seeking to limit constitutional rights, particularly the right to assemble, the bill overlooks the broader spectrum of assemblies beyond demonstrations, such as processions, vigils, and protests. Introducing unnecessary offences targeting peaceful protesters risks transforming individuals exercising their democratic rights into perceived criminals, subject to unwarranted criminal prosecution. This not only undermines democratic values but also stifles dissent, potentially eroding trust between the government and its citizens. Therefore, it is essential to reevaluate the bill to ensure it upholds constitutional rights and aligns with principles of democratic governance and public order management.
PART I Definitions and Interpretation clauses	"Assembly"-Intentional gathering of a number of people in a publicly accessible place for common expressive purpose	-Add more than 100 "Assembly"- Intentional gathering of more than 100 number of people in a publicly accessible place for common expressive purpose	The clear designation of people will be useful in ensuring that the definition of assemblies is known. This will be helpful in curbing retaliatory attacks on targeted persons and arbitrary arrests.
	"demonstration" means an act of a person, or a group'displaying their willvigorous determination'	-Add the following definition free speech, demonstration, gathering, protests, procession, assembly "free speech" is Freedom of speech is the right of a person to articulate opinions and ideas without interference or retaliation from the government.	Internationally, the guiding definition is Assembly refers to an act of intentionally gathering, in private or in public, for an expressive purpose and for an extended duration. The right to assembly may be exercised in a number of ways, including through demonstrations, protests, meetings, processions, rallies, sit-ins, and funerals, through the use of online platforms, or in any other way people choose. For further definition guidelines reference is made to Article 21 of the International Covenant on Civil and Political rights. It

		<p>“demonstration” means an act of a person group Assembly of persons organized to engage in free speech or activity e.g., protests ...intended to attract attention /precipitate change</p> <p>‘Gathering’ means any assembly, concourse or procession of more than 15 persons in or on any public road as defined in the Road Traffic Act, or any other public place or premises wholly or partly open to</p>	<p>protects peaceful assemblies wherever they take place: outdoors, indoors, and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.</p>
	<p>“peaceful” includes conduct that may annoy or give offence to individuals or groups opposed to ideas or claims that the assembly is seeking to promote and includes conduct that temporarily hinders, impedes or obstructs the activities of third parties and temporality blocking traffic.</p>	<p>-Redefine</p> <p>Alternatively</p> <p>‘Peaceful’ shall be interpreted to include all actions that do not lead to physical harm and destruction of property’</p>	<p>The definition is too board. It allows room for dispersing peaceful assemblies/ E.g., most processions slow or bock traffic while remaining peaceful. As such, this is punitive and may processions will be curtailed.</p>
	<p>“police” means Kenya Police Service</p>	<p>-Delete the definition</p> <p>Alternatively</p> <p>‘Police means anyone assigned by the Inspector general to undertake public order management duties’</p>	<p>Assigning the responsibility of managing public order to a subordinate of the National Police Service enables many officers to circumvent standard reporting mechanisms, investigations, and prosecution in cases of property damage or injuries/fatalities.</p> <p>The definition should encompass all personnel known to manage protests, including prison warders. Limiting the definition to the Kenya Police Service is insufficient, as in recent times, even the National Youth Service have been deployed to manage protests. Therefore, it should be revised to include “anyone</p>

			<p>deployed by the Inspector General to manage public order."</p>
	<p>"riot damage" means any loss suffered as a result of any injury to or death of any person, or any damage destruction of any property, caused directly or indirectly by, and immediately before, during or after, the holding of a gathering</p>	<p>Delete the words indirectly, immediately before, or after</p> <p>Alternatively</p> <p>riot damage" means any loss suffered as a result of any injury to or death of any person, or any damage destruction of any property, caused directly and during, the holding a gathering</p>	<p>This definition is overly broad, giving the Kenya police the discretion to link any unrelated event occurring before or after an assembly directly to the assembly. The danger in this lies in the potential for wrongful/malicious prosecution of individuals for incidents that have no connection to the assembly.</p>
	<p>"Regulating officer"</p>	<p>-Add with the status of a subcounty commandant</p> <p>"means the officer in-charge of an area with the status of a subcounty commandant in the area in which a proposed assembly or demonstration is proposed to be held, or in the case of a public procession, the police officer-in-charge of the police station in the area in which the procession is proposed to start and to end</p>	<p>The 2010 Constitution of Kenya introduced a devolved system of government, establishing counties and sub-counties. This new administrative structure has significant implications for the command hierarchy of the National Police Service. Assemblies, such as processions, often traverse multiple sub-counties, necessitating a higher-ranking regulatory officer to oversee and ensure seamless transitions across these jurisdictions. This measure aims to enhance coordination and maintain order during such events, thereby aligning with the devolved governance framework and ensuring effective law enforcement.</p>
<p>Section 3 objects and purpose of the Act</p>	<p>(d) ensure that the right of persons to participate in assemblies and demonstrations may be exercised without payment of a fee, charge or other amount for licence, permit or other authorisation</p>	<p>Delete</p>	<p>The current Kenyan legal framework on the freedom to protest does not mandate any payments in the form of fees, charges, or other amounts. Additionally, individuals do not need a permit or authorization to hold a protest; they only need to provide a notification. Any fees incurred are solely based on the organizers' choice of venues, such as KICC and Nyayo Sports Complex.</p>

			Therefore, this section is unnecessary and serves no purpose
Section 4	This Act shall apply to all members of the public to and shall take into account the right of members of the public to- (a) enjoy the natural environment, and (b) carry on business	-Delete	Public Order Management Guidelines should be for both the public and officers as well.
Section 5	This Act shall not affect the common law of Common trespass, including the right to request a trespasser to vacate the land or the right to remove the trespasser from the land.	Delete	The inclusion of trespass provisions in a bill aimed at regulating the freedom of assembly is unnecessary. Existing measures, such as the requirement for notices and the presence of marshals, already provide sufficient safeguards to manage all forms of assemblies effectively. These established guardrails ensure that assemblies are conducted in an orderly manner without the need for additional trespass regulations.
Section 6	6 (1) The right to peacefully assemble or demonstrate may be limited under Article 24 of the Constitution in the manner specified in subsection (2) The right contemplated in subsection (1) may not be exercised by any person where such an assembly or demonstration may affect (a) public safety (b) public order, and © the protection of the rights and freedoms of other persons	Delete	Rather than specifying particular circumstances, such as public order or protection of rights, under which the freedom to assemble can be limited, the bill should include a single, general limitation clause as is in Article 24 CoK, 2010. This approach would prevent the state from using public order as a pretext to curtail the freedom to assemble, as has occurred in the past. A simple limitation clause, will allow the nuances of a specific assembly (a continuum) and the scope of rights to be worked out by the courts where need be. This may be a reasonable approach in established democracies with credible courts like Kenya. Progressive cases such as Waititu and Olal demonstrate that Kenyan courts are experienced and robust enough to organically develop appropriate limitations without further legislative guidance.

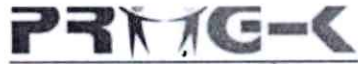
Section 7	1) A person shall not hold an assembly or demonstration except in accordance with the provisions of this section	Delete the whole section	Further unnecessary limitations.
	5)The notification by the regulating officer under subsection (4) shall be in writing and shall be delivered to the organizer at the physical address specified pursuant to provisions of subsection (3)	Add “...and shall be delivered through a digital system/email”	<p>For a long time, there have been allegations of notifications/response to notifications not being issued as per the law.</p> <p>To address these issues, it is essential to adopt various formats of service to ensure efficient and transparent communication. This includes implementing a Digital Notification System with a centralized online portal where organizers can submit notifications and receive responses, standardized forms for capturing all necessary details, a tracking system for real-time status updates, and automated acknowledgment receipts upon submission.</p> <p>Email communication should also be enhanced by establishing official email addresses for submissions and responses, with dedicated addresses for different regions or types of assemblies. Automatic confirmation receipts should be sent when emails are received. Standardized response templates should be used to ensure consistency and clarity, with content guidelines to ensure responses include all necessary information, such as reasons for any restrictions or additional requirements.</p> <p>To ensure transparency and accountability, public logs of all notifications and responses should be maintained and accessible through the online portal, with anonymized data to protect privacy. Including a clause to formalize the notification and response process, along with provisions for penalties in cases of non-compliance by regulating officer/organizer, will further enhance accountability.</p>

<p>Section 8</p>	<p>8 (1) The regulating officer may, in a written notice, specify conditions for the holding of an assembly or demonstration</p>	<p>Delete</p>	<p>Granting a regulating officer the power to set conditions before a protest poses significant risks to the fundamental right to freedom of assembly, potentially leading to arbitrary and discriminatory enforcement. Such powers could suppress specific groups or viewpoints, discourage public participation, and create a chilling effect on protests. This undermines the principle of equality before the law and can escalate tensions between protestors and law enforcement, resulting in more significant disruptions and conflict.</p> <p>Over-regulation of protests can damage a country's democratic framework by limiting citizens' ability to express their views, influence public policy, and hold the government accountable. To uphold democratic principles and ensure public order, it is crucial to balance necessary regulations with the protection of essential freedoms, avoiding broad discretionary powers that can lead to abuse and international criticism.</p>
<p>Section 9</p>	<p>9 (1) Where a condition is imposed under section 8, or where an assembly or demonstration is prohibited, the convener may apply to the High Court to set aside or vary such condition or to set aside such prohibition and the judge may refuse or grant the application</p>	<p>DELETE THE WHOLE SECTION</p>	<p>DIRECTLY RELATED TO SECTION 8</p>
<p>PART III Section 10</p>	<p>(2) A convener shall ensure that the marshals specified in subsection (1) and participants in the assembly or demonstration are informed of the conditions of holding the assembly or demonstration</p>	<p>Delete</p>	<p>This is addressed in the Public Order Act cap 56</p>

Section 11	11. A person shall not, at an assembly or demonstration-	DELETE 10 a, b, d	Banners, placards, chanting, and songs are essential in protests for effectively communicating messages, demands, and grievances. They provide a visual representation of issues, making it easier for the media and public to understand the protest's purpose.
	(a) by way of a banner, placard, speech or singing or in any other manner incite hatred of other persons or any group of persons on account of differences in culture, race, sex, language or religion		
	(b) perform any act or utter any words that are calculated or likely to cause or encourage violence against any person or group of persons,	DELETE	Chanting and songs foster unity and solidarity, creating a collective identity and strengthening participants' resolve. These elements draw public and media attention, amplifying the protest's visibility and spreading the message more widely. They also inspire, motivate, and mobilize participants while evoking empathy and support from the broader public. These tools also offer nonviolent means of expression, maintaining the peaceful nature of protests.
	(c) wear a disguise or mask or any other apparel or item which obscures his face or prevents his identification,	DELETE	Curtailling these forms of expression poses significant dangers by infringing on free speech and assembly rights, limiting effective communication, and potentially silencing dissent. Restrictions weaken democratic participation, reduce civic engagement, and erode the democratic process. Prohibiting nonviolent expression can lead to frustration, escalating tensions, and increasing confrontations with authorities. Fear of penalties may deter protest participation.
	(d) wear any form of apparel that resembles any of the uniforms worn by security forces including the police and Kenya Defence Force, or	DELETE	These are addressed of in Public Order Act, cap 56. Part II-Quasi military organizations and political Uniforms
(e) possess any offensive weapon, otherwise than in pursuance of lawful authority	Adjust to include a clear definition of an offensive weapon	The broad definition is a fertile ground for malicious prosecution and retaliatory attacks at protesters who may be carrying placards etc.	

<p>SECTION 12</p>	<p>12 (1) Where, during the carrying on of an assembly Liability for or demonstration, damage to property occurs as a result of the assembly or demonstration, every organisation and every person participating in such assembly or demonstration shall, subject to subsection (2), be jointly and severally liable for such damage (2)</p>	<p>DELETE Sections 1 and 2</p>	<p>The proposed amendment is not recommended. If enacted, it would further limit this constitutionally guaranteed right to assemble as per Article 37.</p> <p>Organizers of public gatherings and protests play a pivotal role in ensuring the right to freedom of assembly is respected. They act as a bridge between protesters and the police, ensuring that assemblies and protests are conducted lawfully. Therefore, organizers are essential in ensuring protests remain within legal limits. However, placing the level of responsibility proposed by the amendment on them constitutes an unfair restriction on the right to freedom of assembly.</p> <p>Liability for criminal acts should be individual, meaning only those proven to have engaged in criminal behavior should be held accountable. Organizers of protests and participants should not be held liable unless they themselves have committed criminal acts</p>
<p>SECTION 13</p>	<p>Powers of the Police during demonstrations and assemblies</p>	<p>DELETE</p>	<p>The historical and primary role of the police in assemblies is to provide security and maintain law and order when necessary, as mandated by the constitution and the National Police Service Act. This section of the bill fails to acknowledge that police actions can also potentially incite violence during protests, and it exacerbates already tense situations with terms like "restrict" and "prevent." The general conduct of the police is already adequately governed by existing statutes.</p>

SECTION 14	<p>14 (1) A person shall not-</p> <p>(a) convene a public assembly with no or adequate notice,</p> <p>(b) knowingly contravene or fail to comply with the notice of a condition to which an assembly or demonstration is subject to,</p> <p>(c) hinder, interfere with, obstruct or resist a police officer, convener, marshal or any other person in the exercise of his powers or the performance of his duties under this Act, or</p> <p>(d) be possession of a weapon or any object unlawfully during an assembly or demonstration</p>	<p>Delete</p> <p>Delete</p> <p>Maintain c</p> <p>Add the definition of a weapon/object</p> <p>a "weapon/object" is defined as an instrument of offensive or defensive combat, including any device used in fighting, such as guns, knives, and clubs. It encompasses any instrument of attack or defense designed to injure, kill, or incapacitate, as well as anything intended to inflict bodily harm or physical damage. <i>This definition covers both traditional and non-traditional instruments capable of causing harm</i></p>	<p>Definitions are crucial in law amendments for several reasons. For instance, they ensure clarity and precision in legal language, reducing ambiguity and misinterpretation, thus facilitating effective enforcement and compliance by clearly defining the scope and application of the law.</p> <p>Definitions promote consistency in legal terminology, ensuring uniform understanding and application across statutes and legal contexts.</p> <p>For this proposed amendment, precise definitions of key terminologies is mandatory towards providing clear criteria for determining violations and compliance.</p>
	<p>(2) A person who contravenes the provisions of subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding one year, or to both.</p>	<p>Maintain in line with 14 (1)</p>	<p>Introducing unnecessary offences targeting peaceful protesters, will potentially transform individuals exercising a fundamental democratic right—the right to assemble—into perceived criminals who necessitate unwarranted criminal prosecution.</p>



Police Reforms Working Group - Kenya

Quality Service Accountability Participation Police Welfare

SECTION 15	Regulations	Held in abeyance	The amendment Bill should not be passed by parliament.
PART V	Repeal section 5 and 6 of cap 56.		The amendment Bill should not be passed by parliament.

*****THE END*****



**MEMORANDUM ON THE ON THE ASSEMBLY AND DEMONSTRATION BILL, 2024
PRESENTED TO THE NATIONAL ASSEMBLY BY KERICHO CIVIL SOCIETY
NETWORK AND TUNAWEZA MEMBERS
Submitted on 7th September 2024.**

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Introduction



The Assembly and Demonstration Bill, 2024 seeks to regulate public gatherings, protests, and demonstrations in Kenya. While the Bill appears to balance the right to peaceful assembly with concerns for public order and safety, it also raises significant concerns from a human rights, good governance, and social accountability perspective. This memorandum outlines our observations and recommendations regarding the Bill.

1. Protection of Constitutional Rights

Article 37 of the Constitution of Kenya guarantees the right to peacefully assemble, demonstrate, picket, and present petitions to public authorities. This right is a fundamental aspect of any democratic society and must be protected.

However, certain provisions of the Bill seem to impose undue limitations on this right. For instance:

- **Notification vs. Authorization:** The Bill requires organizers to seek authorization from relevant authorities before holding assemblies, which may hinder spontaneous and immediate demonstrations. We recommend that the Bill clarify that notification, not permission should be sufficient, in line with international standards.

2. Responsibility and Liability of Organizers

The Bill places significant responsibility on organizers to ensure the conduct of participants, including potential criminal liability for acts of violence or property damage. This could discourage citizens from organizing protests, out of fear of personal liability for actions they cannot fully control.

We suggest a review of these provisions to focus on holding individuals responsible for their actions, without overburdening organizers. The role of law enforcement in maintaining order during assemblies should also be emphasized.



3. Role of Law Enforcement

The Bill provides enhanced powers to law enforcement officers in managing public gatherings, which could open avenues for abuse, especially in politically charged environments.

- **Use of Force:** The provisions on the use of force need to be aligned with the principles of necessity, proportionality, and accountability. Law enforcement should have clear guidelines that prioritize de-escalation and the protection of citizens' rights over repression.
- **Oversight and Accountability:** There should be independent oversight mechanisms to ensure that any abuses by law enforcement during demonstrations are promptly addressed.

4. Duration and Location Restrictions

The Bill imposes restrictions on the duration and location of demonstrations, including provisions that limit protests in certain areas deemed to be sensitive, such as government buildings or public institutions.

While maintaining public order is critical, blanket restrictions on location, especially around areas of significant public interest, could limit the impact of demonstrations. We propose that the Bill offer more flexible guidelines considering both public interest and security concerns.

5. Inclusion of Dialogue Mechanisms

To foster good governance and address social accountability concerns, the Bill should include provisions that encourage dialogue between protesters and authorities. This could involve the creation of mediation mechanisms or advisory bodies that ensure grievances raised during demonstrations are heard and acted upon.

Conclusion



While The Assembly and Demonstration Bill, 2024 seeks to provide a framework for public assemblies, it must ensure that it does not inadvertently curtail the constitutional rights of citizens. Safeguards should be put in place to protect freedom of assembly while ensuring that public order and safety are maintained.

We urge Parliament to consider these recommendations to strike a balance that upholds democratic principles, fosters public participation, and promotes a culture of peaceful assembly in Kenya.

Recommendations:

1. Clarify that organizers need only notify, not seek authorization, for assemblies.
2. Shift liability provisions to focus on individual accountability rather than burdening organizers.
3. Strengthen guidelines on the use of force, emphasizing de-escalation and oversight.
4. Allow for greater flexibility regarding demonstration locations.
5. Introduce mechanisms for dialogue between demonstrators and authorities.



MEMORANDUM

**ON THE ASSEMBLY AND DEMONSTRATION BILL (NATIONAL ASSEMBLY
BILL NO. 28 OF 2024)**

SUBMITTED TO THE CLERK OF THE NATIONAL ASSEMBLY

SUBMITTED BY

**KENYA CONFERENCE OF CATHOLIC BISHOPS, PARLIAMENTARY LIAISON
DESK (PLD)**

RE: ASSEMBLY AND DEMONSTRATION BILL, 2024

Clauses of the Bill	Provision	Issues with the Clause	Justification of the Proposed Amendment/Recommendation	KCCB-PLD's Comments/Position
C. 2	"Assembly" means the intentional gathering of a number of a number of people in a publicly accessible place for a common expressive purpose and includes planned	Spontaneous assemblies are acknowledged in the definition which is a good thing. However, there's no broader definition of	A well-defined explanation of spontaneous assemblies helps ensure they are recognized as lawful and different from organized protests. Without a clear definition, law enforcement might have too much discretion, potentially leading to unnecessary crackdowns on peaceful gatherings.	<i>Include a definition to clarify that spontaneous Assemblies or demonstrations occur in response to immediate issues for a common expressive purpose without prior planning, notification or organization.</i>

	and organized assemblies, unplanned and spontaneous and static and moving assemblies	what they are. The lack of definition could lead to inconsistent enforcement and unwarranted restrictions.	Additionally, having a formal definition prevents misuse of the law, ensuring that spontaneous protests are not unfairly labelled as illegal.	
C.7	(2) A person intending to convene an assembly or demonstration shall notify the regulating officer of such intent at least three days but not more than fourteen days before the proposed date of the assembly or demonstration”	It is common for assemblies to require regulations; however, this should not be mistaken as asking for permission. The sole and main purpose of the notification to the law enforcement is for them to aid the right to assemble. Notice period should be as short as possible	Protests often arise in reaction to immediate social, economic, or political concerns. Requiring lengthy notice may render demonstrations ineffective. Allow the assembly or demonstration proceed once the notice has been availed.	<i>Reduce the notice period to 48 hours, ensuring authorities are informed while preserving the right to assemble promptly. Notification should be facilitative, not restrictive.</i>
C.7	(8)A regulating officer or any police officer of or the above the rank of inspector may stop or prevent the holding of- (a) any assembly or	The bill grants broad authority to law enforcement to disperse protests, even if only a few individuals engage in	Dispersing entire gatherings due to the actions of a few individuals punishes peaceful demonstrators and violates the principal of proportionality.	<i>Require law enforcement to isolate and remove disruptive individuals rather than dispersing the entire assembly. This ensures public order without infringing on</i>

	<p>demonstration held contrary to the provisions of this section</p> <p>(b) any assembly or demonstration which having regard to the rights and interests of the persons participating in such assembly or demonstration, poses a present or imminent danger of a breach of the peace of public order,</p> <p>and may, for any of the purposes aforesaid, give or issue such orders, including orders for the dispersal of the assembly or demonstration as are reasonable in the circumstances, having regard to the rights and freedoms of the persons in respect</p>	<p>disorderly conduct.</p>		<p><i>fundamental rights.</i></p>
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	of whom such orders are issued and the rights and freedoms of others”			
C. 7	<p>7. The organizer of an assembly or demonstration or his authored agent shall be present throughout the assembly or demonstration and shall assist the police in the maintenance of peace and order at the assembly or demonstration</p> <p>10. A person who takes part in an unlawful assembly or demonstration or holds, convenes or organizes or is concerned in the</p>	<p>This places unfair liability on organizers making them responsible for maintaining law and order, which is a duty of law enforcement.</p> <p>Organizers shouldn't bear legal responsibility for crowd behavior.</p> <p>The term unlawful assembly is vague and open to misuse by authorities.</p> <p>Criminalizing participation in 'unlawful assembly' without clearly defining what</p>	<p>It is unreasonable to expect organizers to control participants in a public demonstration. Liability should be personal and based on wrongdoing.</p> <p>Criminalizing peaceful participation violates article 37 of the constitution which guarantees the right to peaceful assembly. Restricting this right should only be done under</p>	<p><i>Law enforcement should be solely responsible for maintaining order. Liability should apply only to individuals proven to have committed unlawful acts.</i></p> <p><i>Remove all criminal sanctions and impose civil penalties for minor infractions, ensuring that peaceful</i></p>

	holding, convening or organizing of any such assembly or demonstration commits the offence of taking part in an unlawful assembly under Chapter IX of the Penal Code and liable to imprisonment for one year	constitutes such an assembly, leaves room for broad interpretation and potential misuse.	clear, necessary, and proportionate legal grounds.	<i>demonstrators are not unfairly prosecuted.</i>
C.8.	<p>1. The regulating officer may, in a written notice, specify conditions for the holding of an assembly or demonstration.</p> <p>2 A condition under subsection (1) shall relate to-</p> <p>a. A matter concerning</p> <p>i) public safety</p> <p>ii) the maintenance of public order, or</p> <p>iii) the protection of the rights and freedoms of persons,</p> <p>b. the payment of the costs of cleaning up which may arise out of the holding of the</p>	The bill allows regulating officers to impose conditions without clear justification, including requiring organizers to cover cleanup costs.	This provision imposes undue financial burden on demonstrators. Such costs should be covered by public funds, as with other public events. The government has a duty to enable rather than restrict peaceful demonstrations.	<i>Remove provisions placing financial obligations on organizers and require objective written justification for any imposed conditions. Conditions should not unreasonably limit time, place and manner of demonstration.</i>

	<p>assembly or demonstration.</p> <p>c. The recognition of any inherent environmental or cultural sensitivity of the place of assembly or demonstration, and</p> <p>d. The application to the place of assembly or demonstration of any resource management practice of a delicate nature</p>			
C. 9	<p>(1) Where a condition is imposed under section 8, or where an assembly or demonstration is prohibited, the convenor may apply to the High Court to set</p>	<p>The process for appealing restrictions is lengthy and may prevent timely demonstrations. We know our court processes are quite lengthy and it takes even longer to get a</p>	<p>Protests often address time sensitive issues. Delayed appeals undermine their effectiveness and violate the right to assembly. assembly or demonstration to proceed as planned.</p>	<p><i>The clause to include shorter timelines for hearing and determination. Courts to resolve appeals within 24 to 48 hours. If no ruling is made within this timeframe, the demonstrations should proceed as planned.</i></p>

	<p>aside or vary such condition or to set aside such prohibition and the judge may refuse or grant the application.</p> <p>(2) The application referred to in subsection (1) shall be filed within three days after receipt of the notice of imposition or a condition or prohibition.</p> <p>(3) A condition or prohibition under this section shall remain in force until it is set aside or varied by the High Court.</p> <p>(4) Where the High Court upholds the conditions or prohibition,</p>	<p>judicial decision.</p> <p>There needs to be a set timeline for the court to make its decision so that it doesn't affect the timeliness of an assembly or demonstration</p>		
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	<p>the regulating officer shall bar the place of the assembly or demonstration and keep it closed or inaccessible to the public for such time as may be necessary to prevent the assembly or demonstration from taking place.</p>			
C. 11	<p>A person shall not at an assembly or demonstration-</p> <p>a. By way of a banner, placard, speech or singing in any other manner incite hatred of other persons or any group of persons on account of differences in culture, race, sex,</p>	<p>The bill imposes broad restrictions, such as banning masks and specific attire, potentially infringing on freedom of expression, the prohibitions are ambiguous.</p>	<p>Many demonstrators use masks to protect their identity from retaliation, and attire restrictions may be used selectively to suppress dissent.</p>	<p><i>Allow masks and uniforms unless they are used for criminal purposes, ensuring restrictions do not unfairly limit expression. any</i></p>

	<p>language or religion</p> <p>b. Perform any act or utter any words that are calculated or likely to cause or encourage violence against any person or group of persons;</p> <p>c. Wear a disguise or mask or any other apparel or item which obscures his face or prevents his identification;</p> <p>d. Wear any form of apparel that resembles any of the uniform worn by security forces including the police and Kenya Defence Forces; or</p> <p>e. Possess any offensive</p>			
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	<p>weapon, otherwise than in pursuance of lawful authority.</p>			
C 12	<p>(1) Where, during the carrying on of an assembly or demonstration, damage to property occurs as a result of the assembly or demonstration, every organization and every person participating in such assembly or demonstration shall, subject to subsection (2), be jointly and severally liable for such damage.</p> <p>(2) It shall be a defence to a claim against a person or organization contemplat</p>	<p>The bill imposes collective liability on all participants for damages caused during a protest. This clause infringes on the constitutional right to peacefully assemble and demonstrate.</p>	<p>Holding peaceful protesters accountable for the actions of a few violates the principle of individual liability. This provision is open to abuse by law enforcers.</p>	<p><i>Amend the clause to ensure only those proven to have committed unlawful acts are held liable. Remove provisions that unfairly penalize organizers.</i></p>

	<p>ed in subsection (1) if such a person or organization proves-</p> <p>(a) That the person or the organization did not permit or connive at the act or omission which caused the damage in question;</p> <p>(b) That the act or omission in question did not fall within the scope of the objectives of the assembly or demonstration in question and was not reasonably foreseeable;</p> <p>or</p> <p>(c) That the person or the organization took all reasonable steps within the person's</p>			
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	<p>or organization's power to prevent the act or omission in question:</p> <p>Provided that proof that the person or the organization forbade an act of the kind in question shall not by itself be regarded as sufficient proof that the person or the organization took all reasonable steps to prevent the act in question.</p>			
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MEMORANDUM TO THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
INTERNAL SECURITY IN THE MATTER OF THE ASSEMBLY AND DEMONSTRATION BILL,
2024.

Background

The Independent Policing Oversight Authority ("the Authority") is established pursuant to the Independent Policing Oversight Authority Act, Cap 86 Laws of Kenya ("IPOA Act"). Section 5 of the IPOA Act sets out the objectives of the Authority as follows: -

- (a) hold the Police accountable to the public in the performance of their functions;*
- (b) give effect to the provision of Article 244 of the Constitution that the Police shall strive for professionalism and discipline and shall promote and practice transparency and accountability; and*
- (c) ensure independent oversight of the handling of complaints by the Service*

The Authority pursuant to Section 6(c) of the IPOA Act, is mandated with the function of monitoring and investigation of policing operations affecting members of the public. In realization of this mandate, the Authority has on numerous occasions actively monitored the conduct of members of the National Police Service ("NPS") on public order management during the exercise of the right under Article 37 of the Constitution of Kenya, 2010 ("the Constitution") by members of the public with the most recent being the Anti-Finance Bill protests in the months of June, July and August.¹

In the course of such monitoring, the Authority has been able to document and issue recommendations designed to enhance accountability and uphold professionalism within the NPS in accordance with the principles enshrined under Article 244 of the Constitution. The introduction of the Assembly and Demonstration Bill, 2024 ("the Bill") has significant implications for NPS officers, as they are entrusted with guaranteeing the enjoyment of fundamental rights, including the right to assemble, demonstrate and picket, as enshrined under Article 37 of the Constitution. Through its oversight role, the Authority seeks to ensure that these rights are protected and upheld while maintaining law and order.

Additionally, the Authority notes that the National Police Service can also take administrative measures during public order management in order to ensure professionalism and respect for fundamental human rights and freedoms. The Authority in its latest Monitoring Report on Policing of the Anti-Finance Bill 2024 Protests held in various counties in the month of June, July & August made several recommendations to the Inspector General which included;

1. Provision of adequate tooling and kitting of police officers during demonstrations;
2. Clear identification of all police officers in demonstrations including through affixing name tags for public and police safety. In protest situation, the uniform identifies police officers and validates their verbal proclamations and actions. The Riot Drill Training for the Force pamphlet to be followed strictly as it does not envision civilian attired officers policing riots including carrying weapons and arresting protesters;

¹ Monitoring Report on Policing of the Protests Held in Various Counties in the month of June, July & August.

3. Calibration/serialization for riot gear that is not personalized by the National Police Service with distinct visible numbers and a record kept for accountability purposes;
4. Clear identification of all police assets and vehicles in demonstrations;
5. Provision of first aid to the injured by the National Police Service;
6. Training of Officers on use of crowd control equipment;
7. Training and retraining on use of policing tools and equipment;
8. Adequate mechanisms of proactive engagement with protest organizers to reduce the tensions that are often witnessed during protests. Both parties to reach common agreements as regards the security of the assemblies. This will introduce humanness and citizen-centric policing of assemblies;
9. Embracing the use of videography and body-worn cameras during protests to enhance evidence gathering to inform prosecution of persons arrested during protests. Importantly, this will also contribute to independent police accountability; and
10. Police preparedness and planning ahead: For the Service to be able to adequately police protests and ensure safety of property as per its obligations under section 24 of NPS act 2011, there is need for the Service to plan ahead covering all aspects pertaining Policing of assemblies including offering security to protect private business.

1. The Assembly and Demonstration Bill, 2024 ("the Bill")

The Principal object of the Bill is to provide a legal framework for the regulation of assemblies and demonstrations. The Bill seeks to give effect to the provisions of Article 37 of the Constitution which provides for the right of any person to assembly, demonstration, picketing and petition.

Part I of the Bill provides for the preliminary provisions, including the interpretation of terms used in the Bill as well as the object and purpose of the Bill, which is to give effect to the provisions of Article 37 of the Constitution.

Part II of the Bill provides for the application for assembly or demonstration. This part provides that a person intending to hold an assembly or demonstration shall notify the regulating officer in advance. This part also gives power to the regulating officer to impose conditions on the carrying out of an assembly or demonstration and such conditions may relate to public safety, the maintenance of public order or the protection of the rights and freedoms of persons.

Part III of the Bill provides for the conduct of an assembly or demonstration. This part specifies the prohibitions during an assembly or demonstration, and imposes liability for damage on an organization or person who convenes or takes part in an assembly or demonstration. This part further sets out the powers of the police during an assembly or demonstration.

Part IV of the Bill provides for the provisions on delegated powers. This part gives power to the Cabinet Secretary to make regulations for the better carrying into effect of the provisions of the Bill.

Part V of the Bill provides for the repeal of sections 5 and 6 of the Public Order Act, Cap. 56. (" Public Order Act")

The Authority pursuant to an invite in the local dailies dated 19th August 2024 submits its comments on the Bill to the Departmental Committee on Administration and Internal Security.

The proposed Bill as outlined above in our view presents a significant step backwards in the protection of fundamental rights, particularly the right to assemble, demonstrate, picket, and petition as enshrined under Article 37 of the Constitution. The right to peaceful assembly is a cornerstone of democratic engagement and a critical achievement of the Constitution, which was designed to promote and protect the freedoms of expression and participation in public affairs. By introducing onerous restrictions, such as the requirement for pre-approval by regulating officers, the imposition of conditions on assemblies and the potential for punitive liability on conveners, the Bill seek to unjustifiably curtail the exercise of these rights. Such limitations, in our view, fall outside the permissible restrictions outlined under Article 24 of the Constitution, which requires any limitation of rights to be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. The proposed provisions threaten to infringe upon the very essence of public participation and civic engagement by subjecting it to excessive state control. It is imperative that any legislative framework enacted in this area be progressive and purposive, fostering the exercise and enjoyment of constitutional rights rather than undermining them. As such, the Bill, in our view stands in direct conflict with the constitutional guarantees under Article 37. The Authority is therefore opposed to the Bill in its entirety. In our view the better approach would be to amend to the public order Act to align it with the constitutional guarantees under Article 37.

In the foregoing part the Authority therefore sets out a detailed analysis of the Bill to highlight is divergence from constitutional rights and fundamental freedoms, International treaties on human rights that the country has ratified and international best practices in public order management.

DETAILED ANALYSIS OF THE BILL

The Bill aims to create a legal framework for regulating assemblies, demonstrations, picketing, and petitions, as stipulated under Article 37 of the Constitution. While its stated objective is to ensure public safety and order, several of its provisions raise concerns regarding the potential for abuse and the retrogressive nature of its limitations on fundamental rights.

Key Provisions of the Bill:

1. **Preliminary Provisions (Part I):** Establishes the interpretation of terms and the overall objective of the Bill, which is to regulate the right to assembly and

demonstration in line with the Constitution. The Authority wishes to make the following comments;

Firstly, the definitions under Section 2 of the Bill are vague and overbroad and offend the doctrine of over breadth. Further, there are many more definitions that have been left out including: Public order, picketing and presentation of petitions, IPOA, police and public order.

Also, Section 3(b) provides a blanket opportunity for the right to assemble to be infringed upon for lack of appropriateness

As regards Section 3(c), by design, demonstrations and picketing are not always orderly and therefore, this 'public order being used as justification to deny the right to demonstrate must be clearly defined in consistency with the objects and purpose article 37 of the Constitution.

Section 3(b) and (c) of the Bill also offend the provisions of Article 19 (1) and (2) of the Constitution, Article 37 of the Constitution, Article 20 of the Universal Declaration of Human Rights, 1948, Article 21 of the International Covenant on Civil and Political Rights² and Article 11 of the African Charter on Human and People's rights.³

In respect to Section 6 of the Bill, Article 24(2) does not refer to "rights and freedoms of others" but the wording is "the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others."

The Bill dropping the word "fundamental" carries heavy implications. This is because by design, demonstrations may 'affect' the freedom of individuals to move around for the hours of the protest. However, that is not sufficient reason to deny individuals the right to demonstrate.

The provisions offend the provisions of Article 19 (1) and (2) of the Constitution, Article 24(2) of the Constitution, Article 37 of the Constitution, Article 20 of the Universal Declaration of Human Rights, 1948, Article 21 of the International Covenant on Civil and Political Rights and Article 11 of the African Charter on Human and People's rights.

2. **Application for Assembly or Demonstration (Part II):** Requires anyone planning a demonstration to notify a regulating officer in advance. It also gives the officer authority to impose conditions based on public safety, order, or the protection of other people's rights, providing significant discretion to the police.

Firstly, the Bill does take into account spontaneous protests that may take place without a notice. The requirement for a notice for all protests therefore in effect will

² Acceded to by Kenya on 1st May, 1972.

³ Acceded to in Kenya on 23rd January, 1992

make spontaneous protests illegal. Yet spontaneous protests are also protected under Article 37 of the constitution and Article 21 of the International Covenant on Civil and Political rights to which Kenya is a party.

As regards Section 7 of the Bill, the limitation envisaged by Section 7 of the Bill is not consistent with the provisions of Article 24 (1) of the Constitution which provides three part test that: (a) a limitation will only be acceptable when 'prescribed by law; (b) when it is necessary and proportionate; and (c) when the limitation pursues a legitimate aim' namely:- the interests of national security or public safety; the prevention of disorder or crime; the protection of health or morals; or the protection of the rights and freedoms of others.

The limiting nature of this clause has the effect of taking away completely the essential core of the right under Article 37.⁴

The clause further gives a huge discretion to the regulating officer on the enjoyment of the right under Article 37 of the Constitution thereby threatening infringement of that right.

Secondly, Section 8 of the Bill which authorizes the Regulating Officer to impose conditions for a demonstration: "the payment of the costs of cleaning up which may arise out of the holding of the assembly or demonstration." is a prohibitive financial penalty because the convener and participants of the demonstrations may be unable or unwilling to pay such costs. This effectively bars them from demonstrating.

This provision also limits the right to exercise the rights under Article 37 instead of seeking to preserve and protect the said right and further offends Article 20 of the Universal Declaration of Human Rights, 1948, Article 21 of the International Covenant on Civil and Political Rights and Article 11 of the African Charter on Human and People's rights.

Section 8 further offends best international practices as regards the enjoyment of the exercise of the right under Article 37 of the Constitution. Paragraph 13 of the of the Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests⁵ provides:

"States and their law enforcement agencies are obliged not to impose undue restrictions or interfere in peaceful assemblies."

Section 9 of the Bill also limits the right to exercise the rights under Article 37 instead of seeking to preserve and protect the said right and further offends Article 20 of the Universal Declaration of Human Rights, 1948, Article 21 of the International

⁴ Refer to Wilson Olal and 5 Others versus the Attorney General and 2 Others (2017) eKLR

⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*

Covenant on Civil and Political Rights⁶ and Article 11 of the African Charter on Human and People's rights⁷ as well as Paragraph 14 Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests⁸

3. **Conduct of Assemblies (Part III):** Specifies the prohibitions during assemblies, imposes liability for damages on organizers or participants, and outlines the powers of the police during assemblies or demonstrations, including the potential use of force.

Thirdly, Section 11 of the Bill is broadly drafted and may be interpreted to completely ban all manner of signage and chants during demonstrations further disproportionately curtailing the rights and fundamental freedom under article 37. The use of the phrase 'incite hatred' must be defined because it can mean a range of things. It is also noteworthy the wording in the Constitution in Article 33 on the limitation to freedom of expression, refers to "hate speech" and "incitement to violence" but not "incitement to hatred" referenced in the Bill which is undefined and overly broad.

As regards Section 11 (c) this provision is disproportionate; there could be a myriad of reasons for having face coverings during protests, which the protesters are entitled to namely: religious reasons, in exercising freedom of expression, health reasons and even privacy among others. This Bill cannot therefore, purport to take away these rights.

Secondly, section 12 of the Bill is designed to indirectly deny individuals the right to demonstrate. This section unfairly targets a demonstration's organizers and unfairly imposes conditions that are fundamentally incompatible with the way public protests happen in practice.

The provision therefore disincentivizes individuals from signing up as the formal organizers of a protest. It is noteworthy that the Bill requires protests to have registered organizers as a precondition for their validity.

In reality, there are limits to what the organizers of a protest can reasonably do and that is to clearly spell out the objectives of the protest, and its peaceful nature. The mischief of the above provision is in the fact that it specifically states that doing so is not sufficient proof of all reasonable steps having been taken to prevent damage to property. Therefore, essentially it is impossible to hold a protest under these conditions.

⁶ Acceded to by Kenya on 1st May, 1972.

⁷ Acceded to in Kenya on 23rd January, 1992

⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*

Furthermore, it is unjustifiable and unreasonable to make the organizers responsible for the actions of every person that participates in a demonstration. This is simply impractical and merely serves to deter individuals from registering as organizers of a demonstration. This offends the requirement on the state to create an enabling environment for the enjoyment of rights in Article 19, 24(1) and Article 37 of the Constitution. This is also replicated in Article 20 of the Universal Declaration of Human Rights, 1948, Article 21 of the International Covenant on Civil and Political Rights and Article 11 of the African Charter on Human and People's rights.

Section 13 grant extensive powers to the police that could, if implemented, severely restrict the exercise of the rights under Article 37 of the Constitution as well as Article 20 of the Universal Declaration of Human Rights, 1948, Article 21 of the International Covenant on Civil and Political Rights⁹ and Article 11 of the African Charter on Human and People's rights through limitation of protest areas and routes, as well as impact on public expression.

4. **Delegated Powers (Part IV):** Grants the Cabinet Secretary the authority to create additional regulations for implementing the Bill, which could lead to broad executive control over assemblies and demonstrations.

Part IV which grants the Cabinet Secretary the authority to create additional regulations for implementing the Bill raises significant concerns regarding the potential overreach of executive control over the right to assembly and demonstration as enshrined in Article 37 of the Constitution. The same further threatens the rights under Article 19 (1) and (2) of the Constitution, Article 24(2) of the Constitution, Article 37 of the Constitution, Article 20 of the Universal Declaration of Human Rights, 1948, Article 21 of the International Covenant on Civil and Political Rights and Article 11 of the African Charter on Human and People's rights.

5. **Repeal of Public Order Act Provisions (Part V):** Repeals sections 5 and 6 of the Public Order Act, which previously governed public assemblies.

As regards Part V, Sections 5 and 6 of the Public Order Act already have an impact on the exercise of the rights under Article 37 of the Constitution of Kenya and thus focus should be on refining existing legislation to ensure it fosters and facilitates the exercise of Article 37 rights in a manner consistent with Kenya's constitutional values and democratic principles.

In addition, the Bill does not make provision in respect to the obligations by the police in the course of regulating assemblies and demonstrations. Accountability by the members of the NPS is a critical concept founded under Article 10(2)(c), 232(1)(e) and 244 (B) of the Constitution.

⁹ Acceded to by Kenya on 1st May, 1972.

Additionally, international best practices dictate that accountability as a concept must be provided for in legislation through creation of obligations in order to ensure enjoyment of the right under Article 37 of the Constitution. This is supported by paragraph 35, 36, 37, 46(b), 49, 50, 51, 68, 69 76, 77, 79, 84 and 88 of the Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests¹⁰

Conclusion & Recommendation

Consequently, the Authority does not support the Bill. Instead, it proposes that the Public Order Act which already provides a robust and well-established legislative framework for regulating public assemblies and demonstrations be amended to align it more closely with constitutional provisions and International human rights treaties which Kenya has ratified and international best practices on public order management.

In addition to the foregoing the National Police Service should implement recommendations by the Authority contained in the Monitoring Report on Policing of the Anti-Finance Bill 2024 Protests held in various counties in the month of June, July & August.

Implementation of the IPOA recommendations would bring policing during public order management in line with human rights requirements and ensure proper accountability.



ELEMA HALAKE, SS
DIRECTOR/ CHIEF EXECUTIVE OFFICER

¹⁰ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*



TRANSPARENCY INTERNATIONAL KENYA MEMORANDUM TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY ON THE ASSEMBLY AND DEMONSTRATION BILL (NATIONAL ASSEMBLY BILL No. 28 of 2024)

To: The Clerk of the National Assembly

9th September 2024

Organization

Transparency International - Kenya (TI-Kenya) is a not-for-profit organization founded in 1999 in Kenya with the aim of developing a transparent and corruption free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that are all bound by a common vision of a corruption-free world. The vision of TI-Kenya is a corruption-free society while its mission is to champion the fight against corruption by promoting integrity, transparency and accountability in both public and private spheres.

Introduction

The Assembly and Demonstrations Bill, 2024 is an Act of Parliament to give effect to Article 37 of the Constitution; to provide for the regulation of the right of assembly and demonstration; and for connected purposes.

TI-Kenya notes that there is an existing legal framework governing public order management and the exercise of the right of assembly and demonstration; namely the Constitution and the Public Order Act Cap 56.

Article 37 of the Constitution clearly stipulates that every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

The Constitution under article 24(1) states that: A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.

Following an invitation for public participation on the Bill, TI-Kenya wishes to make the following recommendations;

Section of the Bill	Provision of the Bill	Proposal for amendment	Rationale/ justification for amendment recommendation
2(1) - Interpretation	"assembly" means the intentional gathering of a number of people in a publicly	In the definition, provide a distinction between planned events and incidents of spontaneous public disorder	The interpretation fails to consider and distinguish planned events and incidents of spontaneous public disorder which are also

	accessible place for a common expressive purpose and includes planned and organized assemblies, unplanned and spontaneous assemblies and static and moving assemblies		recognized under the Constitution and protected under international law.
2(1) - Interpretation	"assembly notice" means a notice of intention to hold a public assembly, demonstration, picketing, and presentation of petitions to public authorities	Revise the definition to specify that "assembly notice" means a notice of intention to hold a planned public assembly, demonstration, picketing, and presentation of petitions to public authorities	Fails to make consideration for spontaneous assemblies which are recognized under the Constitution and also protected under international law.
2(1) - Interpretation	"peaceful" includes conduct that may annoy or give offence to individuals or groups opposed to the ideas or claims that the assembly is seeking to promote and includes conduct that temporarily hinders, impedes or obstructs the activities of third parties and temporarily blocking traffic.	Do away with the provision/ proposed interpretation	<p>The word is defined in the negative and in a manner to negate the actual definition of the word "peaceful". As such, it imputes that assemblies are bound to be non-peaceful which is unjustified.</p> <p>The interpretation disregards the right to free speech and article 37 of the Constitution which allows for peaceful assembly. As such, it is contrary to article 24(2)(b) and (c) of the Constitution.</p>
2(1) - Interpretation	"public gathering" means any assembly, concourse or procession of more than 100 persons in or on any public road as defined in the Roads Act or any other public place or premises wholly or partly open-	Align the definition with that of the Public Order Act which defines a "public gathering" to mean a public meeting, a public procession, and any other meeting, gathering or concourse of ten or more persons in any public place;	The variance between legal definitions of the same words is bound to cause confusion in application



4 - Application	This Act shall apply to all members of the public, and shall take into account the right of members of the public to- (a) Enjoy the natural environment; and (b) Carry on business	Do away with the clause	The relation between the limitation and its purpose has not been established, as required under article 24(1) (e) of the Constitution. The provision is an attempt to negate the constitutionally guaranteed right under article 37; with no clear purpose.
6(2) - Limitation of the right to peaceful assembly and demonstration	The right contemplated in subsection (1) may not be exercised by any person where such assembly or demonstration may affect - (a) Public safety (b) Public order; and (c) The protection of the rights and freedoms of other persons	Do away with the clause	The relation between the limitation and its purpose has not been established, as required under article 24(1) (e) of the Constitution. Peaceful assemblies have a fundamental expressive element which is protected under Article 33. In relation to article 36, the activities of associations, including the organization of protests, are also protected.
7 - Application to hold assembly or demonstration	Application to hold assembly or demonstration	<ul style="list-style-type: none"> • Propose to add guidance on the nature of the requirement of notice. That is, a specific provision that the notice is not a request for permission but a means to enable the police to prepare to facilitate and protect an assembly effectively. • In cases where the police have information on the potential for a serious breach of public order or safety, this should be clearly disclosed to the organizers, 	<ul style="list-style-type: none"> • The section grants unchecked excessive powers to the regulating officer/ the police to limit and prevent exercise of the right under article 37. • No corresponding duties and responsibilities have been assigned to the police, to do as much as they can to encourage exercise of the right.

		including giving room to come up with alternatives instead of limiting exercise of the right.	
7(3)(b)	A notice under subsection (2) shall be in the form prescribed in the regulations and shall specify- (c) The full names and physical addresses of the marshals appointed by the convener, if any.	Do away with the clause	The requirement for marshals is placing an unreasonable obligation on organizers, contrary to articles 37 and 24(1) of the Constitution. This is an unreasonable and unjustifiable limitation to exercise of the right
12(1) - Liability for damage	Where, during the carrying on of an assembly or demonstration, damage to property occurs as a result of the assembly or demonstration, every organization and every person participating in such assembly or demonstration shall, subject to subsection (2), be jointly and severally liable for such damage.		This is a punitive clause that seeks to limit exercise of the right under article 37, without establishing the relation between the limitation and its purpose, as required under article 24(1) (e) of the Constitution. Further, the obligation to protect life and property under the Constitution lies on the National Police Service.
14(1) (a) - offences and penalties	A person shall not convene a public assembly with no or adequate notice.	Amend the clause to provide that: A person shall not convene a planned and organized public assembly with no or adequate notice.	Fails to consider spontaneous assemblies which are recognized under the Constitution and protected under international law.
Lacuna in the Bill		Recommendation for inclusion of a provision in the Bill, that the regulating officer should respond to a notice from an organizer within a reasonable amount of time and at least 24 hours,	The Bill fails to provide an obligation for the police to respond within a reasonable amount of time; upon receipt of the notice by the organizer.



		giving adequate reasons for a decision that it is not possible to hold the proposed assembly or demonstration	Such a clause is crucial to promote timely, prompt and efficient communication by the police upon receiving notification of an activity towards exercise of article 37.
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CONTACT INFORMATION:

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 Executive Director
 Transparency International Kenya
 Bishop Magua Center, Off Ngong Road – George Padmore Lane
 Ground Floor, Wing B UG 7 P.O. Box 198-00200, Nairobi

MATRIX OF PUBLIC VIEWS ON THE ASSEMBLY AND DEMONSTRATIONS BILL, 2024

CLAUSE	PERSON/ENTITY	PROPOSAL	JUSTIFICATION
Entire Bill	Ministry of Interior and National Administration	Support the enactment of the Bill and repeal section 79 of the Penal Code on the penalty for unlawful assembly with the penalty under the Bill.	<ul style="list-style-type: none"> - Section 5 and 6 of the Public Order Act which has provisions dealing with assemblies and demonstrations is inadequate. - The bill is important because it: <ul style="list-style-type: none"> o recognizes that the right to assembly is not absolute and may be limited; o places the onus of ensuring that the assembly is held peacefully on the convener o sets out the prohibitions during an assembly o attaches liability for loss on organisations and participants in an assembly thus ensuring that those who suffer loss and damage have a recourse o gives the police an active role in the assembly or demonstration; o satisfies the order of the Court in <i>Ngunjiri Wambugu v Inspector General of Police Caninet Secretary for Interior and the</i>

			<i>Attorney General (Nairobi Petition No. 269 of 2016)</i>
	<ol style="list-style-type: none"> 1. Rose Asaria 2. Gregy Obino 3. Onsase George 4. Maureen Jade 5. Charles Wachira Mwema 6. Aoko Odhiambo 7. Evonne Wanjeri 8. Jay Jay 9. Enock Cheruiyot 10. Real Maish 11. Waiharo Simon 12. Nicholas Gitobu 13. Arielle Wairimu Kiarie 14. Kibet Rono Rolex 15. Weldon Ngeno 16. Moses Ngatia 17. Mugambi Phineas 18. Maryann Kariuki 19. Winrose Kinya 20. Kewara Samuel 21. Samul Sanyo 	Support the enactment of the Bill	<ul style="list-style-type: none"> - Enhances public safety by establishing structured guidelines to prevent disruptions and ensure safety. - Legal Clarity by providing a transparent process for organizing demonstrations. - Protects Rights & Property by balancing demonstrators' rights with public and property protection - Provides a structured engagement with authorities - Strengthening democratic participation by establishing a structured legal framework. - Supporting effective law enforcement:

	<p>22. Brielle Bella Kangethe</p> <p>23. Riteluk Loktar Elijah</p> <p>24. Josphat Murage</p> <p>25. Lucy Maina</p> <p>26. Mwalimu Muthisya</p> <p>27. Joseph Kariuki Mwangi</p> <p>28. Jennifer C. Rono</p> <p>29. Edwin Rono</p> <p>30. Mercy Nashupe</p> <p>31. David Wang'oma</p> <p>32. Fortunator Minayo</p> <p>33. Monicah Waithira</p> <p>34. Joel Kiplanga</p> <p>35. Cliff Ombeta</p> <p>36. Jeremia Omondi</p>		
Entire Bill	<p>1. Greenbelt movement</p> <p>2. Kennedy Oluoch Okeyo</p> <p>3. Maryanne Muriuki</p> <p>4. Magara Okello</p>	Reject the Bill in its entirety	<p>1. Undermining Constitutional Rights: The Bill threatens to undermine the rights enshrined in Article 37 of the Constitution.</p> <p>2. Unchecked Police Powers: The Bill grants the police excessive and unchecked powers to regulate, control, and prevent public assemblies and demonstrations, which</p>

	<ol style="list-style-type: none"> 5. Bernard Omondi 6. Ron Mogoi 7. Munio Kevin Kirumba 8. Marvin Osolo 9. Humphrey Wambugu 10. Mulewa Muthoka 11. Kiarrii Kimani 12. Churchil Oluoch 13. Collins Koome 14. Kevin Nganga Njenga 15. Brian Sanare 16. Martin Peter 17. Paul Ngei 18. Delbert Mokamba 19. Rose G. 20. Andrew Bana 21. Joan Machanje 22. Peter Mogaka 23. Sang Josphat 24. Kibaara Mutethia 25. Fabisch Murila Amwoka 		<p>powers can easily be abused, leading to the suppression of <i>maandamano</i>.</p> <ol style="list-style-type: none"> 3. Criminalization and Intimidation: By imposing stringent conditions and penalties on organizers and participants, it effectively turns peaceful <i>maandamano</i> into a criminal act, which deters citizens from exercising their constitutionally guaranteed rights out of fear of prosecution, fines, or imprisonment. 4. Unreasonable Burdens on Organizers: The Bill imposes unreasonable burdens on organizers by requiring them to navigate a complex and restrictive process before holding any public assembly. These demands are impractical for spontaneous <i>maandamano</i>, which often arise in response to immediate concerns. 5. A rejection of the Bill will affirm Constitutional integrity and Parliament should focus on addressing the root causes of protests and addressing oversight on police conduct.
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	<p>26. Kariuki 27. Janelle Aruwa 28. James Gakunyi 29. Hannington Kemboi 30. Kavinya Mulwa 31. Ngatho Grace 32. Joseph Raphael 33. Beatrice Nganga 34. Judy Alice 35. Jimmy Mutua 36. Ann Mary 37. Emmanuel Barasa 38. Jones Waihenya 39. Winnie Wati 40. Martha Gunga 41. Ngunjiri Kariuki 42. Angeline Wanja 43. Esatia Brian 44. James Wainaina 45. Peter Kamau 46. Oketch Maximillan 47. Faith Milgo 48. Peter Mwangi 49. Mike Kalya 50. Oduor Samson</p>		
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	<ol style="list-style-type: none">51. Ndeda Anaclate52. Donnel Ochieng53. Linah Kinya54. Wafula Richard55. Sheila Mwathi56. Suham Abdishakur57. Peris Kailemia58. Pius Kariungi59. Calvin Osir60. Diana Wandia61. Charity Wambui62. Faith Nderitu63. Daniel Muchai64. Brian Barasa65. Stoneham Kiptoo66. Billy Omondi67. Joseph Mutui68. Evan Gichara69. Jordan Ngugi70. Gerald Mwangi71. Kelvin Macharia72. Justus Mutisya73. Delinah Mijide74. Rose Mumbi75. Pauline Nyakaro76. Fredrick Radol77. Aaron Ruto		
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	<p>78. Dingi Bongo 79. Andrew Indeche 80. Derrick Abiola 81. Cyrus Mwirigi 82. Yvonne Ndolo 83. Charles Okoth 84. Tevin Mwaka 85. Mugi Maina 86. Mark Wambura 87. Esther Karanja 88. Douglas Momanyi 89. Elijah Mutua 90. Douglas Marcus 91. Melody Njuki 92. Alexander Kiio 93. Stacy Lorrain 94. Gabriel Mburu 95. Triumph Mwangale 96. Ismail Mumba 97. Annette Kiiru 98. Kimutai Kemboi 99. Maureen Nkonge 100. Kelvin Mutwiri 101. Muigai Karanja 102. Geoffrey Kimani 103. Naomi Mumbua</p>		
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	<p>104. Valentine Robai 105. Leonard Obonyo 106. Zacharia Njoroge 107. Wambui 108. Shiru Wambui 109. Martin Mburu 110. Jacqueline Ogolo 111. John Mwangi 112. Muige Otieno 113. Gloria Gitonga 114. Innocent Jose 115. Miriam Chepchirchir 116. Ochillo George 117. Victor Murunga 118. David Wamwere 119. Millicent Nyuguto 120. Mwananchi Mzalendo 121. Maureen Mwaghoti 122. Patrick Nderitu 123. Bella Kimutai 124. Stephen Juma 125. Grace Waigumo Kiragu 126. Sophy Njaramba</p>		
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	<p>127. Benard Mugwe 128. Jacinta Muriranja 129. Brian Chege 130. Nepurko Keiwua 131. Tecla Otieno 132. Fesus Kinoti 133. Philomena Muyodi 134. John Muiruri 135. Thiauri J.T 136. Wahome Wilson 137. Nelima Chekoko 138. Brian Koome Kinoti 139. Nancy "Zake" 140. Karen Nkatha 141. Shilen Rahul Shah 142. Ashley Wanjiru 143. Kiogora Mugambi 144. Naom Musellah 145. James Vincent 146. M.C. Wanjiru 147. Timothy Mutambuki 148. Ted Ributhi</p>		
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	<p>149. Martin Gitau 150. Sethphil Kim 151. Ndungu Kimani 152. Timothy Mburu 153. Leroy Ochieng 154. Kipkurui Rono 155. Shiru Njenga 156. Emmanuel Osinde 157. Gicheru K 158. Langat Brenda 159. Brilliant Kirui 160. Felix Muriuki 161. Anthony Miriti 162. Kibingo Jenaro 163. Evans Wandera 164. Teresa Kotut 165. Wycliffe Bosire 166. Borma Villa 167. Purity Njoki 168. Victoria Shiroh 169. Faith Wandiba 170. Jared Ouko 171. Ernest Gichuhi 172. Joseph Chege 173. Kevin Wachira 174. Mohamed Bayusuf</p>		
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	<p>175. Clare Anyango 176. Steve Kimuli 177. Joy Mwende 178. Charlie Amani 179. Grace Wakio 180. Elvis Kipruto 181. Stanley Kiguru 182. Kevin Kibet 183. Koech Cherotich 184. Hildah Mulwah 185. Wanjiku Muchiri 186. Phoebe Kimasyu 187. Erick Wachira 188. John Gitonga 189. Ikol Emminat 190. Augustus Mwangi 191. Moryn Mumbi. 192. Nelly Wanjiru 193. Amitai Diagne 194. Wilson Kenagwa 195. Ben Omondi 196. Rose Tunguru 197. Shirley Odera 198. Thuo Githua 199. Maryanne Maina 200. Steven Githu 201. Wacera</p>		
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	<p>202. Vincent Kiema Kyalo</p> <p>203. Claire Wanjiku Muriuki</p> <p>204. Joy Dima</p> <p>205. Viona Wanjiku Muchene</p> <p>206. Wahito Wahome</p> <p>207. Caleb Omolo</p> <p>208. Jentrix Wanyama</p> <p>209. Kevin Macharia</p> <p>210. Jeffery Muciri</p> <p>211. Mwarari Wa King'ori</p> <p>212. Andrew Indече</p> <p>213. Melavin Muthamaki</p> <p>214. Wilson Aura</p> <p>215. Fred Munyua</p> <p>216. Valerie Omwony</p> <p>217. Keneth Maina</p> <p>218. Kendi</p> <p>219. Nadya Issa</p> <p>220. Ted Ndege</p> <p>221. Viviene Mwangi</p> <p>222. Nkirote Mwenda</p> <p>223. Sean Mukiza</p>		
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	<p>224. James Makau 225. Mwana Magendo 226. Ciryani Achola 227. Yvonne Natasha 228. Belinda Odera 229. Duncan Kanyua 230. Brian Owino 231. Noel Kitemu 232. Clare Wangoi 233. Evans Munene 234. Margaret Kamau 235. Maina Wanjiru 236. Naomi Mbataru 237. Chris Otieno 238. Dennis Kinuthia 239. Simon Wachi 240. Cynthiah Robi 241. Victor Murunga 242. Millicent Nyuguto 243. Wafula Richard 244. Sheila Mwathi 245. Alexander Kiiro 246. Stacy Lorrain 247. Gabriel Mburu 248. Annette Kiiru 249. Muigai Karanja</p>		
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	<p>250. Valentine Robai Inziani</p> <p>251. Leornard Obonyo</p> <p>252. Zachariah Njoroge</p> <p>253. John Mwangi</p> <p>254. Caleb Omolo</p> <p>255. Wahito Wahome</p> <p>256. Viona Muchene</p> <p>257. Bella Cheptoo Kimutai</p> <p>258. Sophia Rimando</p> <p>259. Brian Njau Chiira</p> <p>260. Nashipae Kabiru</p> <p>261. Aggrey Omboki</p> <p>262. Asterix Hassan</p> <p>263. Immaculate Musembi</p> <p>264. Kiprotich Eldon</p> <p>265. Lynn Marie</p> <p>266. Momanyi Benson</p> <p>267. Maneta Masinde</p> <p>268. Isaac Kiptoo</p> <p>269. Elvis Kamala</p> <p>270. Rose Mumbi</p> <p>271. Geoffrey Kimani</p>		
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	<p>272. Kibiwot Kevin Kibet</p> <p>273. Naadya Issa</p> <p>274. Paul Kelinuel</p> <p>275. Nepurko Keiwua</p> <p>276. Marcus Douglas</p> <p>277. Momanyi Douglas</p> <p>278. Moryn Mumbi</p> <p>279. Bernard Mugo</p> <p>280. Sophy Njaramba</p> <p>281. Sulleiman Abdul</p> <p>282. Rose Gathigia</p> <p>283. Leah Wanjiku</p> <p>284. Grace Kiragu</p> <p>285. Patrick Nderitu</p> <p>286. Steven Junior</p> <p>287. Marianne Muriuki</p> <p>288. Lewis Majau</p> <p>289. Mirian Chepchirchir</p> <p>290. Ochilo George Ber</p> <p>291. Mary Wanjiru mwangi</p> <p>292. Christabel Anyona</p>		
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	<p>293. Simon Kiragu Njuguna</p> <p>294. Emily Masaranja</p> <p>295. Jackson Gatimu</p> <p>296. Bravin Mwangi</p> <p>297. Shallom Wanjiru</p> <p>298. Linet Kemunto</p> <p>299. Esther Evusa</p> <p>300. Chris Waweru</p> <p>301. Faith Nderitu</p> <p>302. Daniel Muchai</p> <p>303. Charity Wambui</p> <p>304. Calvin Osir</p> <p>305. Stoneham Kiptoo</p> <p>306. Evan Gichara Njenga</p> <p>307. Jordan Ngugi</p> <p>308. Joseph Mutui</p> <p>309. Ciru Waweru</p> <p>310. Martin Mburu</p> <p>311. Jacqueline Ogolo</p> <p>312. Gerald Mwangi</p> <p>313. Melody Njuki</p> <p>314. Justus Mutisya</p> <p>315. Kristie Nabalayo Wattimah</p> <p>316. Murage Gichuki</p> <p>317. Brenda Mumbi</p>		
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	<p>318. Brian Kibere 319. Lavine Ojode Ateng 320. Lewis Sawe 321. Esther Wanjiru 322. Hiribae Wanyoike 323. Millan Kipkoech Kiptum 324. June Wanjiru 325. Shirley Nyausi 326. Jeffrey Ngugi 327. Lewis Majau 328. Duncan Macharia 329. Christine Irungu 330. Humphrey Obando 331. Sharon Thuita 332. Jackson Charo 333. Alela Lewis 334. Joyce Nduta 335. Barnett Derrick 336. Abner Khuzwayo 337. Kikonde Mwamburi 338. Maurice Agireh 339. Frank Mutia</p>		
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<p>340. Ronald 341. John Brian Otolo 342. Job Ayub 343. Rita N. 344. Mathenge Muchiri 345. Patrick Muchiri 346. Shamilla Yusuf 347. Chelsea Vanessa 348. Lynette Kieti 349. Gathoni Mwai 350. Elijah Mutua 351. Krista Joy 352. Mary Wanjiru 353. Tiffany Kawira 354. Anthony Mwithaga 355. Esther Bosibo 356. Sam Josephat 357. Kibara Mutethya 358. Njeri Kinyua 359. Lewis Ngahu 360. Jackline Bitu 361. Gachara Thomi 362. Njeri Muchogu 363. Arya Jeipea Karijo 364. Steve Maina</p>		
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<p>365. Angela Oluoch 366. Fatmah Hussein 367. Anthony Ndungu Nganga 368. Daisy Ouko 369. W. Kuria 370. Leornard Sigeih 371. Nini Maina 372. Treovor Sawaya Ndwiga 373. Wiltah 374. Angela Kaigutha 375. Muthoni Kirimi Mwangi 376. Joannie Sanaiyan 377. Ananda Anjeyo 378. Anne Linnytte 379. Jamal Salat 380. Nowel Chege 381. Pius Munene Mugambi 382. Dennis Muthoni 383. Monicah Nyambura Njoroge 384. Peter Gikundi 385. Ian Mulei 386. Samuel Mwangi</p>		
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	<p>387. Christine Njau 388. Wambui Githiri 389. Susan Njoki 390. Sheldon Odhiambo 391. Ivy Karimi\ 392. Peter Kariuki 393. Victor Ongeto 394. Wairimu Muriuki 395. Philip Masibo 396. Adrian 397. Kelvin Waweru 398. James Mukabana 399. Charity Wacera 400. Murage Gichuki 401. Ziana Chelimo 402. Christabel Anyona 403. Immaculate Musembi 404. Nashipaye Kabiru 405. Abarijah P'mine 406. Valarie Apiyo 407. Fred Munyua 408. Wilson Aura 409. Collins Otieno</p>		
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	<p>410. Julian Nyambura 411. Carolyne Wanjiru 412. Marcus Gitau 413. Fred Kibichi 414. Winnie Mwikali 415. Mercy Wanjira 416. Giruri Mwai 417. Samuel Orwa 418. Erick Marara 419. Norah Maingi 420. Joseph Muteti 421. Charbel Mune Murithi 422. Stephanie Ojee 423. Shuaib Jaber 424. Lewis Ratako 425. Joy Dima 426. Dennis Mukubwa 427. Lorna Wanjiru 428. Dan Oloo Otieno 429. Joan Machanja 430. Jackson Charo 431. David Sifuma 432. Apolo Mileto 433. Gideon Nzoka 434. George Nthenge 435. Dennis Ruriga</p>		
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	<p>436. Marshal Ace 437. Humphrey Wambuhu 438. Cyrus Wanyoike 439. Sandra Mwendwa 440. Thairu Muiruri 441. 11 Concerned Citizens 442. Jentrix Wanyama 443. Maureen Mwaghoti 444. Delbert Mookamba 445. Chrchil Oluoch 446. Diana Wandia 447. Peris Kailemia 448. Pius Karungi 449. Abdishakur Mohammed 450. Sam Ojuang 451. Mike Kalyia 452. Millan Kipkoech Kiptum 453. Wanjiru June 454. Shirley Nyausi</p>		
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	<p>455. Briton Agevi Olembo</p> <p>456. Dominic Musili</p> <p>457. Mandere Crispo</p> <p>458. Kawira Nerisa</p> <p>459. Charles Kinyanjui Njonde</p> <p>460. Triumph Mwangale</p> <p>461. Cathy Imani(Concerned citizen)</p> <p>462. Everlyne Ochieng</p> <p>463. Carolyne Gathuru</p> <p>464. Delinah Mijide</p> <p>465. Kinuthia Karanja</p>		
Entire Bill	<p>1. Bunge la Mayut</p> <p>2. Paula Mumbs (Concerned Citizen)</p> <p>3. Eric Mahasi</p> <p>4. Robert Angira Rapuro</p>	Rejection or withdrawal of the Bill	- The limitation of the right to peaceful assembly and demonstration as per Clause 6 and the application to hold assembly or demonstration as per Clause 7 wishes to defeat the whole purpose of Right to Assembly, Demonstration, Protest, Petition as the same is meant to

	<p>5. Wallace Mwangi 6. Mwihaki Muriranja 7. Gabriel Gicheha 8. Nickson Musau 9. Mercy Kinyua 10. Gichohi 11. Pamela Muriuki 12. Maina J. 13. Clinton Waga 14. John Mumo 15. John Ndungu 16. Peris Gichihi 17. Ismael Mumba 18. Gloria Gitonga 19. Moreen Nkonge 20. Michael Ahere 21. Kimani Waiyego 22. Brenda Mwangi 23. Nani Njoroge 24. Naserian Millicent 25. Antony Mukundi Kariuki 26. Gachara Thomi 27. Gatwiri Bundi 28. Monica Oraro Ochieng</p>		<p>be noticeable, recognized, show displeasure openly in public concerning matters touching on the wellbeing of citizens and their country.</p> <ul style="list-style-type: none"> - It is vague and purports to give Police Officers (State Authority) wide discretion to deny/cancel/arrest persons exercising such a constitutional right. The State does not grant the Right but it is inherent in all individuals, defeating the whole purpose of police officers during Protests which is to provide security to Demonstrators and maintain Order from opposing groups. <p>2. The conditions for conduct of assembly or demonstration and liability for damage as per Clause 8 and 12 respectively intend to suffocate, deter and discourage legitimate Kenyan Citizens from exercising this Right fully without State Sanctions. Owing to the Fluid Nature of Protests one person cannot monitor everyone and everything going on in a Protest. The same is Unconstitutional as it imposes a prohibitive financial penalty that makes the Right useless for those wishing to exercise it.</p>
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	<p>29. Hadija Mwadzaya</p> <p>30. Billy Omondi</p> <p>31. Muhia Leon</p> <p>32. Patrick Ngatia</p> <p>33. John Njoroge</p> <p>34. Christine Wamuyu</p> <p>35. Bervon Wendo</p> <p>36. Mwihaki Muriranja</p> <p>37. Nickson Musau</p> <p>38. Bernard Hinga</p> <p>39. Emily Wandaka</p> <p>40. Kimani Walyego</p> <p>41. Githinji Mbugua</p> <p>42. Peris Gichoki</p> <p>43. Charles Gatonye</p>		<p>3. The prohibitions during an assembly or demonstration as per Clause 11 of the Bill interfere with the Constitutional Right of Freedom of Expression and Privacy that is interdependent and interrelated to the Right to Assembly, Demonstration, Picketing and Petition. Thus the same is Unconstitutional as it would expose Demonstrators to Open State and non-State persecution.</p> <p>4. The Bill lacks a case-by-case evaluation/assessment that would justify the application of the restrictions, the limitation of Rights granted by Article 37 of the Constitution is not proportionate to the legitimate aims sought, reasonable, and justifiable in an open democratic society based on human dignity, equality and freedom.</p>
	<p>1. Njoroge wa Kamuiru</p> <p>2. Emanuel "Manu"</p> <p>3. Caleb Adrian</p> <p>4. Joy Wanjiku</p> <p>5. Kelvin Mutwiri</p> <p>6. Peter Muna</p> <p>7. Wilson Nyenze</p>	<p>Rejects the Bill in its entirety</p>	<p>General rejection</p>

	<p>8. David Njoro 9. Allan Ndirangu 10. David Wamwere 11. Jackson Opiyo 12. George Ndegwa 13. Brian Baraza Mitiny 14. Antony Kariuki 15. Nicolette Kurwa 16. Gideon Kiptoo 17. Kibe Eddy</p>		
	<p>Kimaru Thagana</p>	<p>Rejection of the entire Bill</p>	<ul style="list-style-type: none"> - The limitation of the right under clause 6 is in contravention of Article 37 of the Constitution - The requirement for provision of addressed by convenors poses a threat to privacy as well as the risk of being targeted - Refusal for a notice to hold an assembly due to a different group holding demonstrations in the same place and time may lead to bias against anti-government protestors - Clause 11(a) is vague and opens room for interpretation and harassment as it does

			<p>not give a threshold for what qualifies as “incitement of hatred”</p> <ul style="list-style-type: none"> - liability for damage of property to the organizer creates an atmosphere of fear
	<p>INDEPENDENT POLICING OVERSIGHT AUTHORITY (IPOA)</p>	<p>The amendment of the Public Order Act to align with Constitutional provisions and international Human rights treaties ratified by Kenya and International best practices on public order management.</p>	<ul style="list-style-type: none"> - Definitions in clause 2 of the bill are vague and overbroad and offend the doctrine of overbreadth. - There are many definitions left out including public order, picketing and presentation of petitions, IPOA and public order - Section 3(b) provides for a blanket opportunity for the right to assemble to be infringed upon for lack of appropriateness - Use of public order as a justification to deny rights to demonstrators must be defined in consistency with Article 37 - Clause 3(b) and (c) and 6 offend Articles 19(1) and (2), and 37 of the Constitution, Article 20 of UDHR and Article 21 of ICCPR and Article 11 of the ACHRPR - The requirement for application to hold an assembly does not take into account spontaneous assemblies thus making spontaneous demonstrations illegal - Limitation of rights under clause 7 is inconsistent with Article 24(1) of the

			<p>Constitution as it completely takes away the right under Article 37</p> <ul style="list-style-type: none"> - Clause 7 gives huge discretion to the regulating officer on the enjoyment of the right. - Clause 8 on cleaning up costs is a prohibitive financial condition for demonstrations and offends international best practices - Clause 9 of the Bill limits the right under Article 37 - Clause 11 is broadly drafted and may be interpreted to completely bar all signage and chants during demonstrations ; - Clause 11(c) is disproportionate as there could be a myriad of reasons for face coverings during protests such as religion, health, expression and privacy - Clause 12 imposes unfairly targets demonstration organisers and imposes conditions that are fundamentally incompatible with the way public protests happen - Clause 13 grants extensive powers to the police that could if implemented restrict the right under Article 37
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			<ul style="list-style-type: none"> - Clause 14 grants the Cabinet Secretary broad powers to make regulations which could lead to broad executive control - The Bill repeals section 5 and 6 of the Public Order Act but fails to give obligations of the police during an assembly
	Salma Khamala	Reject the Bill in its entirety	<ul style="list-style-type: none"> - The Bill threatens to severely undermine the constitutionally protected rights of Kenyans to assemble and demonstrate - By placing the responsibility of cleaning up on protestors, the Bill ignores that police also participate in conduct that would require cleaning up
	Nelly Maina	<ol style="list-style-type: none"> 1. Delimit the scope of police powers to avoid misuse or overreach as has been seen prevalent in the past. 2. Allow for spontaneous assemblies in urgent situations without the strict notification requirements in a bid to respect Article 37 CoK 2010. 3. Reduce the burden on organizers by limiting their liability for actions they did not foresee or endorse in a bid to respect Article 37 CoK 2010.. 	<ol style="list-style-type: none"> 1. Overly Broad Discretion to Police: The Bill grants the police significant authority to impose conditions or even prohibit assemblies and demonstrations. 2. Notification Period: The requirement for organizers to give notice to the police at least three days but no more than fourteen days before the assembly might hinder spontaneous assemblies, which are often a critical response to urgent events. 3. Prohibitions and Criminal Liability: Some of the prohibited actions, such as

		<p>4. Ensure that restrictions are proportionate to the need to maintain public safety, without undermining the constitutional right to peaceful assembly.</p>	<p>wearing clothing that resembles security force uniforms or inciting hatred through banners or speeches, might be too vague. They may be subjectively interpreted and infringe on free speech</p> <p>4. Lack of Protection for Peaceful but Inconvenient Protests</p> <p>5. Potential to Violate Constitutional Rights</p>
	<p>Dennis Muturi</p>	<ol style="list-style-type: none"> 1. Revise the Bill to clearly define terms; 2. Streamline notice channels and establish effective dispute resolution mechanisms 3. Prioritize explicit guidelines for de-escalation protocols 4. Remove criminal sanctions and in corporate dialogue during assemblies 5. Ensure sanctions are proportionate 6. Redraft the Bill through broad and inclusive process. 	<ol style="list-style-type: none"> 1. Violation of Constitutional rights particularly Article 37 2. Punitive and retrogressive nature 3. Failure to address contemporary challenges such as an unclear notification regime, lack of essential definitions for public order 4. Absence of civilian oversight during assemblies 5. Disproportionate restrictions such as cleaning fees and conditional assemblies 6. Lack of inclusive consultation with the civil society 7. Failure to align with international best practices

	Kiboi George Kimirei	<ol style="list-style-type: none"> 1. Amend the Bill to ensure that restrictions on assemblies are narrowly tailored and proportionate to a legitimate government objective. 2. The Bill should be amended to establish clear limits on the use of force by the police and to ensure that any use of force is proportionate and necessary. 3. The Bill should be amended to include specific provisions prohibiting the harassment, intimidation, or violence of individuals or groups exercising their right to assemble. 4. The Bill should be amended to bring it into line with international human rights. 5. Conduct public awareness campaigns to inform citizens about their rights to assemble and demonstrate, and the potential implications of the Bill. 	<ol style="list-style-type: none"> 1. The Bill imposes overly restrictive conditions on the notification and conduct of assemblies. 2. The Bill grants excessive powers to the police, which could be abused and used to suppress dissent. 3. The Bill does not provide adequate protections for peaceful assembly. 4. The Bill is inconsistent with international standards
	Matt Muirury	Reject Bill in its entirety	<ul style="list-style-type: none"> - A protest is usually the last resort to any worker/citizen to voice out and bring to attention what is harmful to them.

			<ul style="list-style-type: none"> - The use of the term “maintenance of Public Order” is vague and prone to abuse - The enactment will lead to use of public funds due to imprisonment for illegal protest - The provisions on regulating officers are unclear - The Bill presumes that protesters are violent and irrational
	Ian Gichoya Macharia	Reject Bill in its entirety	<ul style="list-style-type: none"> - Contravention of Article 37 of the Constitution- The Bill introduces restrictions that could be used to limit the right to assemble and transforms the right into a privilege - Ambiguity in Implementation- the Bill lacks clarity in defining what constitutes peaceful demonstration and picketing - Potential for Misuse by Law Enforcement Authorities - Violation of International Human Rights Standards which Kenya is signatory to - Chilling Effect on Public Participation and Civic Engagement
	Hannah Wamuyu	Amend the Public Order act instead of replacing it.	The Bill is a clawback on the rights entrenched under article 37

	<p>Kenya ICT Action Network (KICTANet) and Access Now</p>	<ul style="list-style-type: none"> - Reject the entire Bill and amend the Public Order Act and the Penal Code to decriminalise participation in peaceful assemblies even where procedural requirements have not been met. - Introduce administrative measures rather than criminal penalties - Clearly define what constitutes threat to public order or safety - Restrict police powers to disperse or prohibit assemblies only in the case of imminent danger - introduce mandatory guidelines for de-escalation and proportional use of force - Provide clear channels for participants to channel restrictions of penalties imposed on assemblies 	<ul style="list-style-type: none"> - The UN Human Rights Committee, in its General Comment No. 37, emphasises that restrictions on assemblies must be clearly defined, necessary, proportionate and subject to judicial review. - Arbitrary restrictions undermine the core of the right to peaceful assembly. - Participants in a peaceful assembly should not face criminal sanctions unless their conduct poses a genuine threat to public safety or order. Parliament should adopt non-punitive, facilitative approaches rather than suppression of assemblies
	<p>Mizani 254</p>	<ul style="list-style-type: none"> - Eliminate the discretionary authority of the police to unilaterally reject a protest - Abolish the Imposition of Conditions on protests - That all participants will collectively be held responsible for property damaged during protests. 	<ul style="list-style-type: none"> - could lead to the denial of the right to protest under Article 37 of the Constitution of Kenya - this power risks infringing on the right to free expression and peaceful assembly is

		<ul style="list-style-type: none"> - That the restrictions on placards, banners and chants should be lifted - That the appointment of marshals should be reconsidered. 	<p>applied excessively or without justification.</p> <ul style="list-style-type: none"> - The Bill does not clearly state the nature and extent of conditions authorities can impose - the law should ensure that only those directly responsible for such violent acts are held responsible - Overly broad restrictions could infringe on the freedom of speech protected under Article 33 of the Constitution of Kenya. - It places a heavy reliance on organizers. - The responsibility for maintaining public order should rest with the state.
	David Olusi	Rejects the Bill in its entirety	<ul style="list-style-type: none"> - Violation of Constitutional rights - Imposing stringent rules and penalties on public demonstration will likely create a chilling effect of free speech - Disproportionate impact on marginalized communities for whom peaceful protests are the only means for marginalized communities. - Contrary to international obligations including the ICCPR which Kenya is a signatory to

			<ul style="list-style-type: none"> - Escalation of violence through restrictive laws - Suppressing accountability and transparency - Economic consequences since many social movements that rely on demonstrations advocate for economic justice and reforms - Alternative solutions exist other than imposing restrictive laws - The Bill would sanction abuses by police experienced during the Gen-Z protest - Public order can be maintained through existing laws and effective policing other than restrictive legislation - Blaming protests for isolated acts of violence unfairly punishes all demonstrations - National security should not be used as blanket justification to curtail civil rights - Benefits of citizens freely expressing themselves freely outweighs short term economic costs - isolated cases of misuse of demonstrations should not be used justify sweeping laws
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	<p>Kericho Civil Society Network and Tunaweza Members</p>	<p>That the Bill clarify that notification, not permission need be sufficient in line with international standards</p> <p>An individual should be held accountable for their actions during demonstrations, without overburdening organizers.</p> <p>The Bill should offer more flexible guidelines considering both public interest and security concerns</p>	<ul style="list-style-type: none"> - Article 37 of the Constitution of Kenya guarantees the right to peacefully assemble, demonstrate, picket and present petitions to public authorities - The Bill places significant responsibility on organizers. The role of enforcement in maintaining order during assemblies should also be emphasized - Blanket restriction on locations, especially around areas of significant public interest, could limit the impact of demonstrations.
<p>2. Interpretation</p> <p>(1) In this Act, unless the context otherwise interpretation requires—</p> <p>(2) “appropriate police office” means a police office or police station located in</p>	<p>Law Society of Kenya</p>	<p>Amend definition of “Assembly: <i>Assembly means the intentional gathering of more than 15 people in a publicly accessible place for a common expressive purpose and includes planned and organised assemblies unplanned and spontaneous assemblies and static moving assemblies</i></p>	<p>Defining the number of participants needed to constitute an assembly or demonstration reduces ambiguity, ensures consistent application and enforcement of the law and provides effective management of different sizes of gatherings.</p>

the Sub County in which the assembly is to be held;

“assembly” means the intentional gathering of number of people in a publicly accessible place for expressive purpose and includes planned and organised assemblies, unplanned and spontaneous assembly and static and moving assemblies;

“assembly notice” means notice of intention to hold a public assembly, demonstration, picketing and

presentation of petitions to public authorities;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to internal administration;

“convener” means

(a) any person who, of his own accord, calls a public gathering, and (b) in relation to any organisation or branch of any organisation, any person appointed by such organisation or

branch call a public gathering.

“demonstration” means an act of a person, or a group of persons associated under common objectives parading along, or displaying their will or vigorous determination in public places available for the free movement of the general public, such as roads and parks, with the aim of exerting influence on the opinions of a large number of unspecified person or overwhelming them

“marshal” means a person appointed by the convener or organiser of a public assembly or demonstration to control the participants in the assembly or demonstration and to take steps to ensure that the assembly proceeds peacefully.

“organisation” means any association, group or body of persons, whether or not such organisation, group or body has been incorporated, established or registered in accordance with any law,

"organiser" in relation to a public assembly, demonstration, picketing and presentation of petitions to public authorities for which a notice has been given, means the person specified in the notice as the person responsible for organising and conducting the public assembly, demonstration, picketing and presentation of petitions to public authorities.

"peaceful" includes conduct that may annoy or give offence to individuals or

<p>groups opposed to the ideas or claims that the assembly is seeking to promote and includes conduct that temporarily hinders, impedes obstructs the activities of third parties and temporarily blocking traffic;</p> <p>“public gathering” means any assembly, concourse or procession of more than 100 persons in or on any public roads defined in the Roads Act or any other public place or premises wholly or partly open to the air- (a)</p>			
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at which the principles, policy, actions or failure to act of any government, political party or political organisation, whether or not that party or organisation is registered in terms of any applicable law in Kenya, are discussed, attacked, criticised, promoted or propagated, or (b) held to form pressure groups, to hand petitions to any person, or to mobilise or demonstrate support for or opposition to the views, principles,

<p>policy , actions or omissions of any person or body of persons or institution, including any government, administration or governmental institution, "police" means the Kenya Police Service;</p> <p>"riot damage" means any loss suffered as a result of any injury to or death of any person, or any damage to or destruction of any property, caused directly or indirectly by, and immediately before, during or after, the holding</p>			
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<p>of a gathering. “place of assembly” in relation to a public assembly, demonstration, picketing and presentation of petitions to public authorities that is a procession, includes a place at or through which it is proposed the public assembly, demonstration, picketing and presentation of petitions to public authorities will stop or pass, “public assembly” means an assembly held in a public place, whether or not the assembly is at a particular place or</p>			
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<p>moving, “public place” includes-</p> <p>(a) a road, (b) a place open to or used by the public as of right,</p> <p>(c) a place for the time being open to or used by the public whether or not- (i) the place is ordinarily open to or used by the public, (ii) by the express or implied consent of the owner or occupier , or (d) on payment of money, and</p> <p>“regulating officer” means the officer-in-charge of the police station in the area in which a proposed assembly o r</p>			
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demonstration is proposed to be held, or in the case of a public procession, the police officer-in-charge of the police station in the area in which the procession is proposed to start and to end			
		<i>Demonstration means an act by one or more persons but not more than 15 persons associated under common objectives parading along or displaying their will or vigorous determination in public places available for free movement of the general public such as roads and parks with the aim of exerting influence on the opinions of a large number of unspecified persons or overwhelming them.</i>	Alignment with international standards, many countries have a threshold for what constitutes an assembly or demonstration.
	Kenya National Human Rights Commission (KNCHR)	Amend the definitions to recognise online assemblies and petitions.	- The Bill only protects assemblies in physical places.

			<ul style="list-style-type: none"> - With the evolution of the digital space, more and more assemblies and petitions are being carried out online. - Remote participation in assemblies should be protected in line with regional and global practices/Guidelines
		<ul style="list-style-type: none"> - Add a proviso to the definition of “peaceful” that states that the fact that an assembly may “annoy or offend individuals or groups” should not be grounds for restricting it, as long as the conduct remains non-violent. - Isolated acts of violence do not render an assembly as a whole non-peaceful. 	<ul style="list-style-type: none"> - In line with the Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples’ Rights (African Commission). - In tandem with the Joint declaration on protecting the right to freedom of peaceful assembly in times of emergencies that inter alia provides: “The peacefulness of an assembly must be presumed; isolated violent acts do not render an assembly as a whole unpeaceful or unlawful”.
	Kenya Conference of Catholic Bishops	Insert the definition “ <i>Spontaneous Assemblies or demonstrations</i> ” means the gathering of a number of people in a publicly accessible place for a common expressive purpose without prior planning or organization as a response to immediate issues or events.	There is no broader definition of what spontaneous assemblies are.

<p>Transparency International.</p>	<p>In the definition, provide a distinction between planned events and incidents of spontaneous public disorder</p>	<ul style="list-style-type: none"> - The interpretation fails to consider and distinguish planned events and incidents of spontaneous public disorder which are also recognized under the Constitution and protected under international law.
	<p>Revise the definition to specify that <i>“assembly notice” means a notice of intention to hold a planned public assembly, demonstration, picketing, and presentation of petitions to public authorities</i></p>	<p>FAILS to make consideration for spontaneous assemblies which are recognized under the Constitution and also protected under international law.</p>
	<p>Do away with the provision/ proposed interpretation of the word “peaceful”</p>	<ul style="list-style-type: none"> - The word is defined in the negative and in a manner to negate the actual definition of the word “peaceful”. As such, it imputes that assemblies are bound to be non-peaceful which is unjustified. - The interpretation disregards the right to free speech and article 37 of the Constitution which allows for peaceful assembly. As such, it is contrary to article 24(2)(b) and (c) of the Constitution.
	<p>Align the definition of “public gathering” with that in the Public Order Act.</p>	<p>Variance between legal definitions of the same words is bound to cause confusion in application</p>

	<p>Kiambu Justice and Information Network (KIJIN)</p>	<ul style="list-style-type: none"> - Add 'or her' immediately after the pronoun 'his'; - Replace the word organizing with a different word; - Replace 'Roads Act' with 'Public Roads and Roads Access Act'; - Adopt the definition under Section 2(a) of the Public Roads and Roads Access Act; - Deletion of Sub clause (d) - An additional clause (e) to include 'Any public authority' 	<ul style="list-style-type: none"> - For gender equality and neutrality - Use the word organizing to define organizer - Roads Act is a non-existent Act - There is an existing definition of Public Roads. - It was a typing error - The provisions are silent on carrying out protests, picketing, demonstrations or presenting petitions to public authorities. Also for consistency with the Constitution of Kenya.
		<p>Align the definition of public gatherings with that of the Public Order Act which defines a "public gathering" to mean a public meeting, a public procession, and any other meeting, gathering or concourse of ten or more persons in any public place;</p>	<p>The variance between legal definitions of the same words is bound to cause confusion in application</p>
	<p>Police Reforms Working Group- Kenya</p>	<ul style="list-style-type: none"> - In the definition of assembly, add to read 'Intentional gathering of more than 100 number of people in a publicly accessible place for common expressive purpose' 	<ul style="list-style-type: none"> - The clear designation of people will curb retaliatory attacks on targeted persons and arbitrary arrests.

		<ul style="list-style-type: none"> - Add the definition of free speech, demonstration, gathering, protests, procession, assembly. - Free speech means “the right of a person to articulate opinions and ideas without interference or retaliation from the Government.” - Demonstration to mean “an act of a person group...assembly of persons organized to engage in free speech or activity, e.g protest...intended to attract attention/precipitate change” - Gathering to mean “any assembly, concourse or procession of more than 15 persons in or on any public road as defined in the Road Traffic Act, or any other public place or premises wholly or partly open to” - Redefine peaceful to include all actions that do not lead to physical harm and destruction of property. - Delete the definition of police and alternatively replace it with “police means anyone assigned by the inspector general to undertake public order management duties. 	<ul style="list-style-type: none"> - Internationally, the guiding definition of assembly refers to an act of intentionally gathering, in private or in public, for an expressive purpose and for extended duration. The right to assembly may be exercised in a number of way including by demonstrating, protesting, meetings, processions, rallies, sit- ins, and funerals, through use of online platforms, or any other way people choose. - The provided definition is too broad. It allows room for dispersing peaceful assemblies e.g. most processions slow or block traffic while maintaining peace. - Assigning the responsibility of managing public order to a subordinate of the National Police Service enables many officers to circumvent standard reporting mechanisms, investigations and prosecution in cases of property damages/fatalities. - The provided definition is too broad, giving the Kenya Police the discretion to link any unrelated event occurring before or after an assembly directly to the assembly.
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		<ul style="list-style-type: none"> - Delete the word 'indirectly' in the definition of riot damage and alternatively replace it with "any loss suffered as a result of an injury to or death of any person, or any damage destruction of any property, caused directly and during, the holding of a gathering" - Add 'with the status of a subcounty commandant' in the definition of a regulating officer. 	<ul style="list-style-type: none"> - Assemblies, such as processions, often traverse multiple sub- counties, necessitating a higher ranking regulatory officer to oversee and ensure seamless transitions across these jurisdictions.
	Nabwire Obare Advocates	In the definition of Police, add "any officer instructed by the Inspector general to manage public order"	<ul style="list-style-type: none"> - Kenya' s history during public order management shows that other departments within the Ministry of Interior, like Kenya Prison Service, can be called in to help manage public order.
	Article 19 Eastern Africa	<ul style="list-style-type: none"> - In the definition of demonstration, delete 'vigorous determination' and consider replacing it with "opinion" OR rephrase it and state "or displaying their will or free speech in public places...." - In the definition of Marshals, delete the words 'control the participants.....take steps to ensure that the assembly proceeds peacefully' 	<ul style="list-style-type: none"> - The aspect of vigorous determination is relative based on the person making the decision. - Free speech means "the right of a person to articulate opinions and ideas without interference or retaliation from the Government." - The marshal role should not overtake the roles of the police in protests.

		<ul style="list-style-type: none"> - In the definition of peaceful, delete 'annoy or give offence to individuals or groups opposed to the ideas or claims that the assembly is seeking to promote' - In the definition of peaceful, add a proviso to the definition that states that an assembly may "annoy or offend individuals or groups" should not be grounds for restricting it, as long as the general conduct of protestors remains non-violent. - Additionally, isolated acts of violence do not render an assembly as a whole non-peaceful. - To delete the specific number given in the definition of public gathering. - Delete the word 'Indirectly, immediately before or after' in the interpretation of riot damage. - Add in the definition of a regulating officer 'to be the sub county commander where the demonstrations or process will take place' 	<ul style="list-style-type: none"> - This creates a subjective bias based on individual emotions and not based on a law or statute. - To line with the guidelines on Freedom of association and assembly of the African Commission on Human and Peoples' Rights(African Commission) - The Joint declaration on protecting the right to freedom of peaceful assembly in times of emergencies proves that the peacefulness of an assembly must be presumed, isolated violent acts do not render an assembly as a whole unpeaceful or unlawful - The numbers are not relevant to the right being advocated for. A demonstration can be done by one person if they can communicate their concerns. - The use can be misused by other actors and the protestors will be blamed. - The role should move from individual police stations to the county or sub county police officers.
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	WeCare Community-Based Organization	The definition of demonstration should be refined to ensure alignment with constitutional guarantees and legal regulations	<ul style="list-style-type: none"> - The revised definition acknowledges the peaceful and unarmed nature of demonstrations. - It incorporates with the need to adhere to legal requirements such as permits and notifications - It should maintain the emphasis on public display and influence. - The definition should aim to balance the freedom to demonstrate with the need to maintain public order.
	National Police Service Commission	<ul style="list-style-type: none"> - Amend the definition of the term 'peaceful' - Amend the definition of the term public gathering by substituting 100 persons with 2 or more persons. - Amend the definition of the term police 	<ul style="list-style-type: none"> - Current provision is too broad and may be misinterpreted to include legal activities such as religious gatherings - Limiting a public gathering to 100 persons creates a loophole on the number of persons that are subject to the provisions of the statute - Accord the definition with provisions of Article 243 of the Constitution and Section 2 of the National Police Service Act
	National Police Service	<ol style="list-style-type: none"> 1. Amend Clause 2 to include the definition of excluded meetings 2. Delete the word police and replace it with police officer 	<ul style="list-style-type: none"> - To provide for the definition of excluded meetings - To adopt the definition of the National Police Service Act - To provide for the definition of the CS

		<ol style="list-style-type: none"> 3. Define Cabinet Secretary to mean 'the CS for the time being responsible for national security' 4. Define the term offensive weapon 5. Delete the number '100' immediately before the word 'more than' and replace it with '10' 6. Insert and define the word 'restricted area' 	<ul style="list-style-type: none"> - To provide for the definition of offensive weapon - To retain the current definition of public gathering to mean a gathering of more than 10 persons. - To provide for the definition of restricted areas.
<p>3. Objects and Purposes of the Act.</p> <p>The object and purpose of this Act is to—</p> <p>(a) recognise the right of peaceful assembly and demonstration.</p> <p>(b) ensure, so far as it is appropriate to do so, that person may exercise the right to participate in</p>	<p>Police Reforms Working Group- Kenya</p>	<p>Delete clause 3(d)</p>	<p>The current legal framework on the freedom to protest does not mandate any payments in the form of fees, charges, or other amounts.</p>

<p>assemblies and demonstrations,</p> <p>(c) ensure that the exercise of the right to participate in assemblies and demonstrations is subject only to such restrictions as are necessary and reasonable in a democratic society in the interests of—</p> <p>(i) public safety,</p> <p>(ii) public order, and (iii) the protection of the rights and freedoms of other persons</p> <p>(d) ensure that the right of persons to participate in assemblies and demonstrations</p>			
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may be exercised without payment of a fee, charge or other amount for a license, permit or other authorisation.			
	Article 19 Eastern Africa	Define the terms public order and public safety under sub clause (c)	- The two phrases have the potential to be abused by law enforcement.
4. Application This Act shall apply to all members of the public, and shall take into account the right of members of the public to- (a) enjoy the natural environment, and (b) carry on business	Transparency International	Delete Clause 4	- The relation between the limitation and its purpose has not been established, as required under article 24(1) (e) of the Constitution. - The provision is an attempt to negate the constitutionally guaranteed right under article 37; with no clear purpose.
	Police Reforms Working Group- Kenya	Delete clause 4(a) and (b)	- Public Order Management should be for both the public and officers as well.

<p>5.Common law of trespass. This Act shall not affect the common law of Common Law of trespass, including the right to request a trespasser to vacate the land or the right to remove the trespasser from the land</p>	<p>Police Reforms Working Group- Kenya</p>	<p>Delete Clause</p>	<ul style="list-style-type: none"> - Existing measures, such as the requirement for notices and the presence of marshals already provide safeguards to manage all forms of assemblies effectively. - The guidelines are sufficient and therefore no need for additional trespass regulations.
	<p>ARTICLE 19 Eastern Africa</p>	<p>Delete clause</p>	<ul style="list-style-type: none"> - The law of trespass can affect persons who had legal access but are now deemed as trespassers because of the protests. The phrase is unnecessary
<p>6. Limitation of the Right to peaceful Assembly and Demonstration</p>	<p>Law Society of Kenya</p>	<p>Deletion of sub clause 6(2)</p>	<ul style="list-style-type: none"> - Waters down Constitutional protections for the limitation of the right to freedom of assembly by banning the right to assemble and demonstrate where the assembly may affect public safety, public order or the protection of rights and freedoms of other persons. - The proposal is inconsistent with the Constitutional Standard for the limitation

			of fundamental rights and freedoms under Article 24 of the Constitution
	Kenya National Human Rights Commission (KNCHR)	<ul style="list-style-type: none"> - Strengthen the provisions of clause 6(2) by adding provisions to clearly delineate the interpretation and use of limitations on grounds of public safety, public order and the protection of the rights and fundamental freedoms of other persons. - Include a provision that provides guidelines on these three limitations. - Alternatively, add a clear proviso that expressly stipulates that in interpreting and application of these limitations, the regulating authority shall favour the enjoyment of the freedom of assembly to the greatest extent possible. 	<ul style="list-style-type: none"> - The limitations on grounds of public safety, public order and the protection of the rights and fundamental freedoms of other persons are justifiable reasons to limit rights and they align with regional and international standards. - Nonetheless, the limitations as put thereof are overly broad and subject to abuse. Organizers and participants intending to hold a peaceful assembly or demonstration may still be limited under the guise of public law and order grounds.
	Katiba Institute	<ul style="list-style-type: none"> - Delete Clause 6(2) ; or - An amendment listing procedural requirements in exercising the right in the listed situations but not wholly denying the exercise of the right and 	<ul style="list-style-type: none"> - The use of the words “may not be exercised, suggesting that the right to demonstrate cannot be enjoyed in those three circumstances violates article 24 (2)(c)- see <i>Peter Solomon Gichira v</i>

		- An amendment removing the vague terms but listing down easily understood situations or descriptions of those situations.	<i>Independent Electoral and Boundaries Commission & another [2017] eKLR</i>
	Transparency International	Delete Clause 6(2)	<ul style="list-style-type: none"> - The relation between the limitation and its purpose has not been established, as required under article 24(1) (e) of the Constitution. - Peaceful assemblies have a fundamental expressive element which is protected under Article 33. In relation to article 36, the activities of associations, including the organization of protests, are also protected.
	Police Reforms Working Group- Kenya	Delete Clause	<ul style="list-style-type: none"> - The bill should include a single, general limitation clause as in Article 24 of the Constitution of Kenya, 2010. - A simple limitation clause, will allow the nuances of a specific assembly and the scope of rights to be worked out by the courts where need be.
	Kenyan Civil Society	Delete clause	<ul style="list-style-type: none"> - Provides implementing officials with wide discretionary powers that are not adequately addressed. - The provision suffers from the overbreadth Doctrine.
	ARTICLE 19 Eastern Africa	Define public order and public safety under clause 6(2)	<ul style="list-style-type: none"> - Public order and public safety are terms open to abuse

	Kiambui Justice and Information Network (KIJIN)	<ul style="list-style-type: none"> - Strengthen the provisions of clause 6(2) by adding an additional sub clause(c) to read 'or any other limitation as contemplated under Article 24 of the Constitution of Kenya - An addition of sub clause (d) to Clause 6(2 to) read 'or during a state of emergency' 	<ul style="list-style-type: none"> - To widen the scope of grounds for limiting a right and for conformity with the Constitution. - A right may be limited during a state of emergency as contemplated by the Constitution.
	Kenya Civil Society Organisations	Delete Clause 6(1) and (2)	It provides implementing officials with wide discretionary powers that are not adequately addressed. It breaches the doctrine of overbreadth.
<p>7. Application to hold assembly or demonstration</p> <p>(1) A person shall not hold an assembly or demonstration except in accordance with</p>	Salma Khamala	Deletion of section 7(3) (b) and (d) to remove the requirement for the Notice of an Assembly to contain the names and details of marshalls and the requirement for the proposed site and route of assembly.	This is an unreasonable demand on the marshalls who are not in the business of maintaining law and order, and which is a responsibility of the police under section 24 of the National Police Service Act

<p>the provisions of this section.</p> <p>(2) A person intending to convene an assembly or demonstration shall notify the regulating officer of such intent at least three days but not more than fourteen days before the proposed date of the assembly or demonstration</p> <p>(3) A notice under subsection (2) shall be in the form prescribed in regulations and shall specify—</p> <p>(a) the full names and physical address of the of</p>			
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the organiser of the proposed assembly or demonstration;

(b) the full names and physical addresses of the marshals appointed by the convener, if any;

(c) the proposed date of the assembly or demonstration and the time thereof which shall be between six o'clock in the morning and six o'clock in the afternoon;

(d) the proposed site of the assembly or demonstration the proposed route in

<p>the case of a public procession</p> <p>(4) Where, upon receipt of a notice under subsection (2), it is not possible to hold the proposed assembly demonstration for the reason that notice of another assembly or demonstration on the date, at the time and at the venue proposed has already been received by the regulating officer, the regulating officer shall forthwith notify the organiser.</p> <p>(5) The notification by the</p>		
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regulating officer under subsection (4) shall be in writing and shall be delivered to the organiser at the physical address specified pursuant to the provisions of subsection (3).

(6) Where the regulating officer notifies the organiser of an assembly or demonstration in accordance with subsection (4) that it is not possible to hold the proposed assembly or demonstration, such assembly or demonstration shall not be held on the date, at the time and venue

<p>proposed, but may , subject to this section, be held on such future date as the organiser may subsequently notify.</p> <p>(7) The organiser of an assembly or demonstration or his authorised agent shall be present throughout the assembly or demonstration and shall assist the police in the maintenance of peace and order at the assembly or demonstration.</p> <p>(8) A regulating officer or any police officer of or above the rank of</p>			
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inspector may stop or prevent the holding of—

(a) any assembly or demonstration held contrary to the provisions of this section;

(b) any assembly or demonstration which, having regard to the rights and interests of the persons participating in such assembly or demonstration, poses a present or imminent danger of a breach of the peace or public order, and may, for any of the purposes aforesaid, give or

<p>issue such orders, including orders for the dispersal of the assembly or demonstration as are reasonable in the circumstances, having regard to the rights and freedoms of the persons in respect of whom such orders are issued and the rights and freedoms of others</p> <p>(9) A person who neglects or refuses to obey any order given or issued under subsection (8) commits an offence</p> <p>(10) A person who takes part in an unlawful</p>			
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<p>assembly or demonstration or holds, convenes or organises or is concerned in the holding, convening or organising of any such assembly or demonstration commits the offence of taking part in an unlawful assembly under Chapter IX of the Penal Code and liable to imprisonment for one year</p> <p>(11) The organiser of an assembly or demonstration may request the regulating officer that the police be</p>			
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<p>present at such assembly or demonstration to ensure the maintenance of peace and order.</p> <p>(12) A request under subsection (11) shall be in writing and shall be delivered to the regulating officer at least three days before the proposed date of the assembly or demonstration.</p> <p>(13) The regulating officer shall keep a public register of all notices received under subsection (2)</p> <p>(14) Any person may, during</p>			
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working hours, inspect the register kept under subsection (13)			
		Deletion of Clause 7(4), (5) and (6) on not holding assembly due to another notice of assembly on same date, time and venue	<ul style="list-style-type: none"> - The right to assemble or demonstrate may be triggered by different reasons at the same time and should not be a reason for limiting assemblies <p>The right under Article 37 is not granted but an inherent right</p>
		Deletion of Clause 7(7) on requirement of the organiser to be present at all times during the assembly.	<ul style="list-style-type: none"> - The provision of peace and order is a role of the Police not the organiser.
		Amend Clause 7(8) to require police to seek court order to rely on Clause 7(8) to stop or prevent an assembly that is non-compliant with clause 7	This power is prone to abuse
		Amend Clause 7(8) to require police to seek court order to rely on Clause 7(8) to stop or prevent an assembly that is non-compliant with clause 7	This power is prone to abuse
	Hannah Wamuyu	Delete clause 7(3)	Providing physical addresses for organisers provides an opportunity for abductions and illegal detentions.

	Kiambu Justice And Information Network(KIJIN)	<ul style="list-style-type: none"> - Amend sub clause 7(2) to reduce time of notification from 3 days to within 24 hours or during working days - Changing the word 'shall' to 'may'. - Addition of the words 'of a letter, email, memo, or publication or other prescribed form' 	<ul style="list-style-type: none"> - The set 3-day mandatory notice period may delay the exercise of a right in cases where it must be exercised with urgency and expediency - To allow members of the public to present a notice in any comprehensible form. This will be in line with Article 24(2)(c).
	Nabwire Obara Advocates	Delete Clause 7(1-6)	<ul style="list-style-type: none"> - The notification under Clause 7 requires notices to be issued physically. It fails to utilize current technology of filling out forms. - The notification period be reduced from 72 hours to 48 hours. - The clause does not cater to spontaneous or small gatherings that do not cause disturbances.
	ARTICLE 19 Eastern Africa	Replace 'three days' with two days or 48 hours	<ul style="list-style-type: none"> - Notification to reduce to 48 hours as per international standards.
		Clause 7(4) be amended to conclude with "held at an alternative venue or be held on such future date as the organizer may notify"	<ul style="list-style-type: none"> - The Regulating officer has the obligation to consider an alternative location for the demonstration to take place instead of postponing it.
		Amend clause 7(4) to add "and shall be delivered through a digital system/email"	<ul style="list-style-type: none"> - To implement a digital system with a centralized online portal where

			organizers can submit notifications and submit responses.
		Delete clause 7(7)	<ul style="list-style-type: none"> - It should not be a legal requirement for the organizer to be there. Where necessary information and instructions have been shared with the participants, everyone should be held accountable for their own actions
		Clause 7 (8)(9) to be deleted	<ul style="list-style-type: none"> - Provisions of offences and penalties need to be consistent with the existing laws . - There is no clarification as to the consequences of the offence.
		Amend to adopt the penal code definition of assembly and riot as well as the punishment for unlawful assembly .	<ul style="list-style-type: none"> - The criminal offences in the Bill are not necessary as they target individuals exercising their rights and not people who actually commit crimes.
		Clause 7(8) to have the police officer role assigned to a senior police officer. The Regulating officer to be the sub county commander of where the demonstrations or procession will take place.	<ul style="list-style-type: none"> - The decision and responsibility to limit human rights should be undertaken by a senior command officer. - Reference to public order or peace is ambiguous and open to misunderstandings.
		Rephrase the title to read: Notification to hold assembly or Demonstration Rephrase to "at least two days" .	<ul style="list-style-type: none"> - A notification should be confused with an application. It is information for purposes of the police. - The timeline given has to be reduced to two days or 48 hours. This is the standard set by the African Commission.

	Police Reforms Working Group-Kenya	Clause 7(1) should be deleted	<ul style="list-style-type: none"> - Further unnecessary limitations.
		Amend Clause 7(5) to be amended to add “...and shall be delivered through a digital system/email”	<ul style="list-style-type: none"> - A form of adopting to various formats of service to ensure efficient and transparent communication. - It also involves implementing a Digital Notification System with a centralized online portal.
	Kenya ICT Action Network (KICTANet) & Access Now	<ul style="list-style-type: none"> - Amend to provide for notification systems for peaceful assemblies where organisers simply inform authorities in advance to help facilitate the event and protect public safety. - System should be simple and transparent, not bureaucratic and free of charge - lack of notification should not make assembly unlawful or justify dispersal, arrest or penalties - spontaneous and low impact assemblies should not require notification or be automatically disbanded - Any restrictions should be communicated promptly to allow for legal challenge 	<ul style="list-style-type: none"> - Notification requirement has been historically misused to deny assemblies creating a permission regime - Overly broad discretion given to police increases the risk of abuse - Under UN Human Rights Committee’s general comment No. 37 on Article 21 of the ICCPR, notification requirement should not amount to request for permission - Authorities must facilitate assemblies unless there’s a genuine threat to public order

		<ul style="list-style-type: none"> - On the creation of the offence under Clause 7(10) clearly define what constitutes an “unlawful assembly” to avoid vague interpretation that can be used arbitrarily against peaceful protestors 	<ul style="list-style-type: none"> - Blanket restrictions on freedom of assembly are disproportionate as restrictions do not align with exemptions on limitation of rights and fundamental freedoms under Article 24(2) of the Constitution. - This provision will create a chilling effect on people’s ability to engage in peaceful assemblies which includes activities such as crowdfunding, use of social media for mobilisation and use of online spaces as places of assembly to strategize on organising protests
	<p>Kenya National Commission on Human Rights (KNCHR)</p>	<ul style="list-style-type: none"> - The provisions on the notification regime under clause 7 (1)-(6) need to be strengthened by including additional procedural safeguards, such as written notification of any decisions to restrict or prohibit an assembly with clear reasons, as well as the availability of expedited judicial review. - It should be clear that the notification is not a request for permission. - Provisions should provide that no notification need be submitted for small assemblies, assemblies 	<ul style="list-style-type: none"> - Provisions should provide that no notification need be submitted for small assemblies, assemblies unlikely to generate disturbance or spontaneous assemblies. - This goes against the good practice that a prior notification should only be required where its purpose is to enable the State to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.

		unlikely to generate disturbance or spontaneous assemblies.	
		Delete Clause 7(7)	<ul style="list-style-type: none"> - The State bears the primary duty to facilitate and maintain peace and order at an assembly or demonstration. Organizers should not be obligated to assist the police in carrying out their primary duty. - The Special Mandate on Freedom of Peaceful Assembly has adopted the expert opinion that, “assembly organizers and participants should not be considered responsible (or held liable) for the unlawful conduct of others...(and together with) assembly stewards, should not be made responsible for the maintenance of public order.”
	Kenya Conference of Catholic Bishops	<ul style="list-style-type: none"> - Allow the assembly or demonstration proceed once the notice has been availed. - Shorten Notice period. Amend clause 7(2) to “<i>A person intending to convene an assembly or demonstration shall notify the regulating officer of the such intent within 48 hours before the</i> 	<ul style="list-style-type: none"> - Regulation of assemblies should not be mistaken as asking for permission. The sole and main purpose of the notification to the law enforcement is for them to aid the right to assemble. - Notice period should be as short as possible

		<i>proposed date of the assembly or demonstration.</i>	
		Amend Clause 7(7) to strictly indicate that only law enforcement maintains law and order. <i>“The police shall be present throughout the assembly or demonstration to maintain peace and order at the duration of the assembly or demonstration”</i>	<ul style="list-style-type: none"> - This section will infringe on the right to peacefully assemble and demonstrate due to the risks that will be associated with liability of actions done by others. - Criminal punishment to a civil law is not proportionate.
		Amend the order of dispersing the assembly or demonstration under clause 7(8) in its entirety and have the order of the police identifying and removing the rogue individuals with evidence from the assembly or demonstration.	<ul style="list-style-type: none"> - Peaceful participants in assemblies and demonstrations should not be dispersed entirely due to the actions of a few miscreants. - Police should actively and objectively ensure that the protestors are safe from rogue participants who infiltrate assemblies and demonstrations and wreak havoc.
		Clause 7(10) Remove all criminal sanctions and replace them with civil penalty that fits the disobedience (if any)	Criminal punishment to a civil law is not proportionate.
	Katiba Institute	Deletion of the requirement under clause 7(7) that the organiser of an assembly or demonstration or his authorised agent shall be present throughout the assembly or demonstration and shall assist the police m	<ul style="list-style-type: none"> - constitutional principle that constitutional rights conferred without express limitation should not be cut down by reading implicit restrictions into them

		the maintenance of peace and order at the assembly or demonstration	<ul style="list-style-type: none"> - Article 37 does not impose any obligation on a rights holder other than being peaceful and unarmed. - It is the sole responsibility of the state to maintain peace and order. (<i>Onguto J in Agnes Wacera Macharia & another v Raila Amolo Odinga & 2 others [2017] eKLR para 30</i>)
		<ul style="list-style-type: none"> - Clause 7(9) and (10) Removal of the criminal sanctions; or amendment to ensure that the magistrate has discretion - Reducing the penalties. 	<ul style="list-style-type: none"> - Provision removes the magistrate's discretion by fixing the sentence to one year. - The restriction is not proportional and has a chilling effect on the right; Article 24 requires the state to adopt the least restrictive measure when limiting a right. - The language of human rights does not favour the imposition of criminal sanctions to limit a right.
	Transparency International	<ul style="list-style-type: none"> - Add guidance on the nature of the requirement of notice. That is, a specific provision that the notice is not a request for permission but a means to enable the police to prepare to facilitate and protect an assembly effectively. - In cases where the police have information on the potential for a serious breach of public order or 	<ul style="list-style-type: none"> - The section grants unchecked excessive powers to the regulating officer/ the police to limit and prevent exercise of the right under article 37. - No corresponding duties and responsibilities have been assigned to the police, to do as much as they can to encourage exercise of the right.

		safety, this should be clearly disclosed to the organizers, including giving room to come up with alternatives instead of limiting exercise of the right.	
		Delete Clause 7(3)(b)	- The requirement for marshals is placing an unreasonable obligation on organizers, contrary to articles 37 and 24(1) of the Constitution. This is an unreasonable and unjustifiable limitation to exercise of the right
		Inclusion of a provision in the Bill, that the regulating officer should respond to a notice from an organizer within a reasonable amount of time and at least 24 hours, giving adequate reasons for a decision that it is not possible to hold the proposed assembly or demonstration	To promote timely, prompt and efficient communication by the police upon receiving notification of an activity towards exercise of article 37.
	Law Society of Kenya	Amend Clause 7(1) to read – <i>A person shall hold an assembly or demonstration in accordance with the provisions of this section.</i>	The provision already restricts the assembly or demonstration without due regard to constitutional requirements.
		Reduction of the timeline in Clause 7(2) to 2 days.	The 3-day timeline is contrary to regional best practice set by the African Commission on Human and Peoples’ Rights for notice

			periods to be as short as possible, and ideally no more than 48 hours.
		addition of a new paragraph stating as follows; - <i>"If notice is given later than two days before the date on which the gathering is to be held, the reason why it was not given timeously should be given.</i>	By allowing for an explanation, the requirement acknowledges that legitimate reasons may exist for not meeting the notice deadline thus offering flexibility while still maintaining regulatory standards.
		Amend Clause 7(3) by deleting the requirement for physical address of the organizer and the marshals.	prone to abuse by law enforcement agencies and can be used to gag dissents through different forms of human rights violations.
		<ul style="list-style-type: none"> - Clause 7(4) the regulating officer should give a response to the notice within 24 hours upon receipt of the application to hold assembly or demonstration. - If a convener has not been given a response in terms of the notice within 24 hours after giving the notice, the assembly or demonstration may take place in accordance with the contents of the notice. 	<ul style="list-style-type: none"> - It encourages prompt responses - upholds the fundamental right to free assembly and aligns with principles of administrative fairness and transparency.
		Amend Clause 7(5) to require the notice be sent via email to the organizer. The physical address should subsequently be deleted.	To safeguard the rights of the organizer and security

		Deletion of Clause 7(7)	<ul style="list-style-type: none"> - It is a dereliction of public duty for the police to transfer their constitutional duties and functions to maintain peace and order at assemblies to organizers or any other private citizens. - 2.The imposition of this duty to maintain peace and order on private citizens is unlawful
		Amend Clause 7(10) by deleting the penalty under Chapter XI of the Penal Code and substitute it with a green justice penalty like community work.	No peaceful assembly or demonstration is prima facie unlawful but regulated
	Kenya Civil Society Organisations	Clause 7(3)(a) and (b) be amended to exclude the organizers from providing personal details such as their residential addresses.	<ul style="list-style-type: none"> - These provisions are a breach to one's right to privacy.
		Amend to delete Clause 7(10).	<ul style="list-style-type: none"> - The Bill seeks to impose criminal liability on protestors contrary to Article 37 of the Constitution. - The Bill criminalises “unlawful assembly” and introduces penalties for the same. - There is extensive discretion given to the law enforcers to allow or deny demonstration. - The penalty set is contrary to Article 24(1)(e).

			<ul style="list-style-type: none"> - The Bill instigates intrinsic censures to Kenyans as many Kenyans will fear facing the penalties.
	WeCare Community-Based Organization	Clause 7(2) be amended to accommodate the practical need of protest organizers.	<ul style="list-style-type: none"> - The requirement to notify the regulating officer between three and fourteen days may constrain the ability of the individuals and groups to respond to urgent issues.
		Alternative methods for verifying organizer identity without compromising privacy could be considered.	<ul style="list-style-type: none"> - Requiring the full names and physical addresses of the organizers and marshals may raise privacy concerns and create barriers for individuals who wish to organize protests but are concerned about their safety or privacy.
		Flexibility in updating or modifying the site or route within certain parameters should be allowed to accommodate changes while still maintaining communications with authorities.	<ul style="list-style-type: none"> - The requirement to specify the exact site, while aimed at ensuring public safety and order, may place a significant burden on organizers.
		The notification should be streamlined to ensure that it is not used as a tool to suppress or unduly control peaceful assembly.	<ul style="list-style-type: none"> - The level of detail required in the notification process should be balanced against the need to protect the rights of individuals to assemble and demonstrate.
	National Police Service Commission	<p>The Bill should make provision criteria for restricting assembly and demonstration which must be;</p> <ul style="list-style-type: none"> - Specific - clear 	<ul style="list-style-type: none"> - The provision is a replica of Section 5 of the Public Order Act.

		- lawful	
		Amend clause 7(2) to reduce the notice period to 2 days	A short notification period allows for quicker responses to events balancing spontaneity with order
		Amend Clause 7(8)(b) to restrict use of excessive powers particularly when dispersing assembly or demonstration	Allows for oversight accountability and clear guidelines on use of force.
		Amend Clause 7(9) to provide for personal liability in cases where loss and damage to property arise from acts of violence and vandalism during demonstrations and assembly.	To ensure accountability by persons involved in demonstrations and assembly while protecting the rights of peaceful participants.
		Amend Clause 7(10) to reduce imprisonment to a maximum period of one month and prioritize fines	Shorter sentence period avoids over penalizing minor infractions rather than criminalizing infractions.
	Tribeless Youth	Delete clause 7(1) and (2)	It grants much regulatory control to the regulating officer which can potentially be misused to limit and suppress assemblies
		Delete clause 7(3)	Raises major data privacy concerns for the persons involved under data protection Act. The information may be misused
		Clause 7(4) and (5)	Requirement for regulating officer to notify organizer in writing at physical address poses security risks
		Clause 7(8)	Need to reschedule may result in loss of momentum or relevance
		Clause 7(13)	Public registers could include sensitive details about organizers exposes them to harassment.

<p>8. Conditions for conduct of assembly or demonstration.</p> <p>(1) The regulating officer may, in a written notice, specify conditions for the holding of an assembly or demonstration</p> <p>(2) A condition under subsection (1) shall relate to—</p> <p>(a) a matter concerning—</p> <p>(i) public safety,</p> <p>(ii) the maintenance of</p>	<p>Hannah Wamuyu</p>	<p>Review the power by regulating officers to give conditions relating to clean up.</p>	<p>The organiser of an assembly does not have the power to control any mobs that may join the procession.</p>
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<p>public order, or</p> <p>(iii) the protection of the rights and freedoms of persons,</p> <p>(b) the payment of the costs of cleaning up which may arise out of the holding of the assembly or demonstration,</p> <p>(c) the recognition of any inherent environmental or cultural sensitivity of the place of assembly or</p>			
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<p>demonstration, and</p> <p>(d) the application to the place of assembly or demonstration of any resource management practice of a delicate nature</p>			
	<p>Kiambu Justice and Information Network</p>	<p>Deletion of clause 8(1)(b) and substituting it with 'cleaning up the place of holding the assembly, or demonstration'</p>	<ul style="list-style-type: none"> - There is no framework to receive monies intended to clean up places for holding demonstration or assembly
	<p>Kenya ICT Action Network (KICTANet) and Access Now</p>	<ul style="list-style-type: none"> - Amend to limit imposition of conditions only on those that are strictly necessary to public safety, order or the rights of others - Remove any financial obligation on organisers unless directly related to damages caused by unlawful acts proven in court. 	<ul style="list-style-type: none"> - Imposing financial burdens on organisers could deter participation and penalise individuals for exercising their Constitutional right - vague conditions such as maintenance of public order can be used to impose restrictive measures that infringe on the freedom of assembly - The Special Rapporteur on the right to freedom of peaceful assembly and association has emphasized that financial

			<p>conditions should not be used as a deterrent to the right to assemble;</p> <ul style="list-style-type: none"> - Conditions imposed on assemblies must be necessary and proportionate
	<p>Kenya National Commission on Human Rights (KNCHR)</p>	<ul style="list-style-type: none"> - Strengthen the provisions of clause 8(2)(a) by adding provisions to clearly delineate the interpretation and use of limitations on grounds of public safety, public order and the protection of the rights and fundamental freedoms of other persons. - Include a provision that provides guidelines on these three limitations. - Alternatively, add a clear proviso that expressly stipulates that in interpreting and application of these limitations, the regulating authority shall favour the enjoyment of the freedom of assembly to the greatest extent possible. 	<ul style="list-style-type: none"> - The limitations on ground of public safety, public order and the protection of the rights and fundamental freedoms of other persons are justifiable reasons to limit rights and they align with regional and international standards. - Nonetheless, the limitations as put thereof are overly broad and subject to abuse. Organizers and participants intending to hold a peaceful assembly or demonstration may still be limited under the guise of public law and order grounds.
		<p>Delete the Clause 8(2)(b).</p>	<ul style="list-style-type: none"> - The requirement is onerous and unreasonable. - Bill has not expressed how the cost is to be assessed and there is a greater risk of abuse by leaving this to the discretion of

			<p>the authorities-particularly the regulating officer-to specify such payment conditions.</p> <ul style="list-style-type: none"> - According to the Guidelines on Freedom of Peaceful Assembly developed and published by the Organization for Security and Co-operation in Europe (OSCE), the costs of providing adequate security and safety measures such as traffic should be borne by the authorities.
	National Police Service Commission	Amend Clause 8 to ensure that there is a balance between public order and individual freedom.	There is need to balance between public order and individual freedom.
	Kenya Conference of Catholic Bishops.	<ul style="list-style-type: none"> - The regulating officer to give reasonable and objective justifications of the conditions. - Delete sections 8 (2) (b), (c) and (d). 	<ul style="list-style-type: none"> - The section gives the regulating officer unnecessary powers without checks and may fail the objectivity test - The conditions set out in sections 8 (2) (b), (c) and (d) targets the organizer and sets unbelievable conditions which cannot be met when a public protest is taking place.
	Katiba Institute	Deletion of Clause 8	<ul style="list-style-type: none"> - The regulating officer is empowered to impose conditions in a matter concerning public safety, maintenance of public order, and protection of rights.

			<ul style="list-style-type: none"> - The unlimited powers of the Regulating Officer offends Article 10 of the Constitution - The imposition of the condition of cleaning up costs implicitly imposes obligations on the right holder that are not in the Constitution.
	Law society of Kenya	Deletion of Clause 8 (2) (b)	<ul style="list-style-type: none"> - Creates a chilling effect on the right to assembly and demonstration - 2.Adding the cost of cleanup as a condition could disproportionately affect grassroots organizations or smaller groups that may lack the financial means to cover such expenses - Unconstitutional for vagueness and uncertainty - It is generally the responsibility of the authorities to maintain and clean public areas.
		Delete Clause 8(2)(c)	<ul style="list-style-type: none"> - effectively allows the police broad discretion to arbitrarily determine the places that are open to citizens to exercise their rights to assemble and demonstrate. - The right to freedom of peaceful assembly encompasses the right to choose a venue, time and purpose of assembly.

	<p>Kenya Civil Society Organisations.</p>	<p>Delete Clause 8(1) in its entirety.</p>	<ul style="list-style-type: none"> - The clause paves way for abuse of discretionary powers of the regulating officer and paves way for further restrictions of the right to assemble. - The provisions does not pass the 'provided by law' threshold that requires that restrictions are provided by law, pursue a legitimate aim as well as conform to the strict tests of necessity and proportionality.
		<p>Amend Clause 8(2)(b) to ensure that cleaning up is done by the state.</p>	<ul style="list-style-type: none"> - The Human Rights Council held that the requirement for protestors to bear the clean up cost is contrary to Article 21 of the International Covenant on Civil and Political Rights. - The 'Joint report of the special rapporteur on the rights to freedom of peaceful assembly and of association and the special rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies,2016' by the United Nations Office of the High Commissioner for Human Rights clearly states that states must facilitate protests, and this obligation includes the provision of basic services, such as traffic management, medical assistance and clean-up services.

	Police Refoems Working Group- Kenya	Delete Clause 8(1)	<ul style="list-style-type: none"> - Granting a regulating officer the power to set conditions before a protest could suppress specific groups or viewpoints, discourage public participation and create a chilling effect on pretests which undermines the principle of equality before the law.
	Nabwira Obara Advocates.	Delete Clause 8(2)(b)	<ul style="list-style-type: none"> - Charging any kind of fee to protest is just a way for the state to demand payment for exercising fundamental human rights. - It is a way of intimidating protestors by creating financial barriers.
	ARTICLE 19 Eastern Africa	Delete Clause 8(1) and (2)	<ul style="list-style-type: none"> - Terms such as ‘public order’, ‘public safety’, ‘inherent environmental or cultural sensitivity’, ‘resource management practice of a delicate nature’ are general terms that are open to misinterpretation and abuse by law enforcement. - The requirement is onerous and unreasonable - The Bill has not expressed the cost to be assessed and hence there is a greater risk of abuse by leaving this to the discretion of the authorities. - Such costs should be catered for by the state as provided in the Guidelines on Freedom of Peaceful Assembly.

<p>9. Application to set aside or vary conditions.</p> <p>(1) Where a condition is imposed under section 8, or where an assembly or demonstration is prohibited, the convener may apply to the High Court to set aside or vary such a condition or to set aside such prohibition and the judge may refuse or grant the application.</p> <p>(2) The application referred to in subsection (1) shall be filed within three days</p>	<p>Hannah Wamuyu</p>	<p>Remove requirement to appeal to High Court</p>	<ul style="list-style-type: none"> - This creates a bottleneck. - This can be handled administratively
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<p>after receipt of the notice of imposition of a condition or prohibition.</p> <p>(3) A condition or prohibition under this section shall remain in force until it is set aside or varied by the High Court.</p> <p>(4) Where the High Court upholds the condition or prohibition, the regulating officer shall bar the place of the assembly or demonstration and keep it closed inaccessible to the public for such time as may be necessary to</p>			
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<p>prevent the assembly or demonstration from taking place</p>			
	<p>Kenya Conference of Catholic Bishops</p>	<p>Amend the provision to include shorter timelines for hearing and resolution of the appeal to be within 24hrs, failure to which, the assembly or demonstration to proceed as planned.</p>	<p>Court processes are lengthy. There needs to be a set timeline for the court to make its decision so that it doesn't affect the timeliness of an assembly or demonstration.</p>
	<p>ARTICLE 19 Eastern Africa</p>	<p>Amend clause 9(1) to read "the Convener may apply to the High Court or a Chief Magistrate's Court as a matter of urgency"</p> <p>Amend 9(2) to read that the application filed above is to be filed within seven days after receipt of notice of a position of a condition or prohibition.</p> <p>To delete subclause (3)</p>	<ul style="list-style-type: none"> - An Application to be made to a lower court or different platform for the case to be considered. The High Court is a high level process for persons with limited resources - Three days application process is inconsiderate to the economic situation. The time should be increased to 7 days. - The process of Court to be a last resort option as the constitution promotes alternative dispute resolution mechanisms based on mutual consent and participation.

		Delete clause 9(4)	<ul style="list-style-type: none"> - The Court cannot bar a place from public use as there are avenues for public use. - It violates general public to access public spaces.
	Police Reforms Working Group- Kenya	Delete the whole Section.	<ul style="list-style-type: none"> - Granting a regulating officer the power to set conditions before a protest could suppress specific groups or viewpoints, discourage public participation and create a chilling effect on protests which undermines the principle of equality before the law.
	Tribeless Youth		The criminalisation of refusal to obey orders under clause 8 is an excessive measure that might criminalize minor infractions and could be used to unfairly penalize groups
<p>10. Conduct of assembly or demonstration.</p> <p>(1) A convener may appoint such a number of marshals to control the participants in the assembly or demonstration and to take</p>	Hannah Wamuyu	Review power of marshals to regulate an assembly	<p>This is the responsibility of the police.</p> <p>The police should work together with marshals</p>

<p>necessary steps to ensure that the assembly or demonstration at all times proceeds peacefully.</p> <p>(2) A convener shall ensure that the marshals specified in subsection (1) and participants in the assembly or demonstration are informed of the conditions of holding the assembly or demonstration</p> <p>(3) An assembly or demonstration shall proceed and take place at the locality and</p>			
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	Katiba Institute		<ul style="list-style-type: none"> - The provision imposes an obligation on the convenor of an assembly to appoint marshals and take steps to ensure that the assembly or demonstration always proceeds peacefully, which is an unknown obligation in the Constitution. - the provision does not consider the position of 'spoilers' in the demonstration.
	The Police Reforms Working Group- Kenya	Delete Clause 10(2)	<ul style="list-style-type: none"> - This has been addressed in the Public Order Act cap 56
<p>11. Prohibitions during an assembly or demonstration.</p> <p>A person shall not, at an assembly or demonstration–</p> <p>(a) by way of a banner, placard, speech singing or in any other manner incite hatred of other persons or any group of persons on account of</p>	Salma Khamala	Delete Clause 11(c) which prohibits the wearing of a mask of disguise by a protestor	<ul style="list-style-type: none"> - Use of masks is necessary due to police firing teargas and harmful substances at protestors. - The clause is unnecessary if police follow court orders and stop lobbying teargas

<p>differences inculture,race, sex, language or religion, (b) perform any act or utter any words that are calculated or likely to cause or encourage violence against any person or group of persons, (c) wear a disguise or mask or any other apparel Item which obscures his face or prevents his identification,</p> <p>(d) wear any form of apparel that resembles any of t he uniforms worn by security forces including the police and Kenya DefenceForce, or</p>			
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<p>(e) possess any offensive weapon, otherwise than pursuance of lawful authority</p>			
	<p>Kenya ICT Action Network (KICTANet) and access Now</p>	<ul style="list-style-type: none"> - Amend clause 11(c) and allow masks and disguises unless they are directly used to commit unlawful acts. - Include provisions to ensure that all police officers deployed to manage assemblies are identifiable by wearing police uniforms and visible badges and prohibit wearing of masks and concealment of officers' identities and vehicles - Introduce provisions to strictly regulate and prohibit use of surveillance technologies 	<ul style="list-style-type: none"> - This will constitute a divergence the proposal in <i>Inspector General of Police, & 2 others [2019] eKLR</i> where it was held that limitations on the constitutional right to freedom of assembly ought to be guided by the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. - The prohibition on wearing masks or disguises may infringe on privacy and safety, especially where participants seek anonymity to protect against retaliation. - Restrictions on attire could be misused to target specific groups, infringing on freedom of expression and assembly and puts protestors at risk. - Failure to define "incite, hatred, calculated likely to cause or encourage" under sub clause(a) and (c) provides room for broad interpretations to sanction speech that is not criminally punishable

			<ul style="list-style-type: none"> - subclause (c) fails the test of necessity as it fails to provide grounds for banning face coverings and whether such limitations are proportionate
	Kenya National Commission on Human Rights (KNCHR)	Clearly define what constitutes “offensive weapon” under Clause 11(e) in the Kenyan context	<ul style="list-style-type: none"> - For clarity to avoid ambiguity. - The aspect of “unarmed” demonstration is an important element in determining a peaceful assembly, it is important to therefore identify in a schedule- which may not be exhaustive as to what that means.
	National Police Service	<p>Insert a new section 11(2)</p> <p><i>Where a person at, or in relation to, a meeting or a procession conducted pursuant to a notification</i></p> <p><i>(a) acts in a disorderly manner for the purpose of preventing the transaction of the business for which the public meeting assembled; /public procession</i></p> <p><i>(b) obstructs the free passage of any ambulance, fire engine or vehicle belonging to the National Police Service or the Kenya Defense Force or, otherwise than in the manner and to the extent authorized by the notification</i></p>	To provide for the certain offences related to conduct of demonstration and obstruction of certain classes of vehicles

		<p><i>relating to that meeting procession, impedes or disrupts the use by members of the public in general of any road; or</i></p> <p><i>(c) incites other persons to do so, person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Ksh100,000 or to imprisonment for a term not exceeding 2 years or to both.</i></p>	
	Kenya conference of Catholic Bishops	Allow participants to wear uniforms or display banners, as long as these items aren't linked to hate speech	<ul style="list-style-type: none"> - This section gives the state wide discretion to limit the right to assemble. - The prohibition of wearing uniforms and masks by participants in demonstrations or assembly goes against the standards of protecting freedom of expression during assemblies as provided for in the Guidelines on the Freedom of Association and Assembly in Africa.
	Katiba Institute	Delete Clause 11	<ul style="list-style-type: none"> - The provision infringes on the freedom of expression under Article 33. - While intended to prevent incitement, the provision uses terms subject to the interpretation of the enforcer.
	Kiambu Justice and Information Network(KIJIN)	An amendment should be made to add an additional clause 11(2) to read 'A Police Officer or regulating officer shall not at an	<ul style="list-style-type: none"> - This will help curb the issue of rogue police officers hiding in plain clothing or other persons masquerading as officers

		assembly or demonstration wear a disguise mask or any other apparels or item which obscures his or her face or prevents his or her identification'	
	ARTICLE 19 East Africa	Clause 11 should be deleted in its entirety	<ul style="list-style-type: none"> - Limits freedom of expression - International laws provide that police should also have identification markers including there official police badges - No similar requirement for protestors.
	Nabwire Advocates Obara	Delete Clause 11(a)(b) Delete clause(c)	<ul style="list-style-type: none"> - Wearing of masks should be allowed to prevent reprisals and avoid state surveillance.
	Police Reforms Working Group-Kenya	Delete clause 11(a)(b) Delete clause (c) and (d)	<ul style="list-style-type: none"> - Banners, placards and songs foster unity and solidarity, creating a collective identity and strengthening participants' resolve which draw public and media attention. - Curtailing on these forms poses significant denial of free speech and assembly rights. - These issues have been addressed in the Public Order Act, cap 56
		Amend sub clause (e) to define an offensive weapon	<ul style="list-style-type: none"> - The broad definition can lead to malicious prosecution and retaliatory attacks at protestors who may be carrying placards.

	Kenya Civil Society Organisations.	Delete Clause 11(c)	<ul style="list-style-type: none"> - The proposal is not proportionate to the legitimate aims sought to be achieved by the imposition of those restrictions. - The provision is contrary to Article 24(2) and paves way for reprisal and retribution being meted on organisers and protestors. - The clause paves way for constraints on religion given that religions like Islam and Judaism require covering of the head.
	WeCare Community-Based Organization	Ensuring that prohibitions are specific to incitement that is likely to lead imminent violence.	<ul style="list-style-type: none"> - Prohibitions against inciting hatred or violence through various forms of expression such as banners, placards and speech can lead to unjust limitations on legitimate forms of protesting
		Define 'calculated and likely to cause or encourage violence'	<ul style="list-style-type: none"> - Vagueness can lead to inconsistent enforcement and potential abuse.
		Identifications must be weighed against the potential for misuse and the chilling effect on the right to protest.	<ul style="list-style-type: none"> - Prohibiting the wearing of masks that obscure a person's face raises significant concerns about privacy and safety particularly in demonstrations.
		The clause should ensure that it targets intentional impersonification.	<ul style="list-style-type: none"> - The prohibition against wearing of apparels resembling security force uniforms must be carefully crafted to avoid penalizing similar attire used for legitimate protest purposes.
		Define offensive weapons	<ul style="list-style-type: none"> - The prohibition against possessing offensive weapons should focus on

			preventing real threats while avoiding excessively limiting the right.
	Tribeless Youth	Clause 11(c)	The provision is unconstitutional and denies protestors anonymity from the state
<p>12. Liability for damage. (1)Where,during the carrying on of an assembly Liability for or demonstration, damage to property occurs as a result of the assembly or demonstration, every organisation and every person participating in such assembly demonstration shall, subject to subsection (2), be jointly and severally liable for such damage</p>	Salma Khamala	Delete Clause 12(1)	<ul style="list-style-type: none"> - It is well known that previously goons have been hired to destroy property during protests; - There are already provisions in law to deal with this - The police should be present to protect property during protests - Problem cannot be solved through legislation but through holding high standards of ethics - The use of plain clothed masked officers equally makes it difficult for protestors to identify police officers

<p>(2) It shall be a defence to a claim against a person or organisation contemplated in subsection (1) if such a person or organisation proves—</p> <p>(a) that the person or the organisation did not permit or connive at the act or omission which caused the damage in question;</p> <p>(b) that the act or omission question did not fall within the scope of the objectives of the assembly or demonstration</p>		
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question and was not reasonably foreseeable; or

(c) that the person or the organisation took all reasonable steps within the person's or the organisation's power to prevent the act or omission in question

Provided that proof that the person or the organisation forbade an act of the kind in question shall not by itself be regarded as sufficient proof that the person or the organisation

took all reasonable steps to prevent the act in question			
	Hannah Wamuyu	Anyone caught destroying property should be taken through the court process.	Punitive to organisers who do not have the capacity to control mobs.
		Remove proviso stipulating what is sufficient proof.	Interferes with the trial process and the discretion of the Court.
	Kenya National Commission on Human Rights (KNCHR)	Delete clause 12(1), (2)	<ul style="list-style-type: none"> - Restricts freedom of assembly in general. - It contravenes Article 37 as read with Article 24 (2)(c) of the Constitution which prohibits the enactment of legislation that limits a right or fundamental freedom so far as to derogate from its core or essential content. - It places liability on every person and organization participating in an assembly for damage caused to property during the assembly or demonstration. - The proviso seeks to shift the burden of proof from the prosecution to the organizers which is not only not justifiable but also illegal. - Peaceful demonstrators and organizers should not be

			<ul style="list-style-type: none"> - penalized for their actions. Instead, the State should fulfil its - positive obligation to ensure peaceful assemblies by protecting such assemblies from such elements.
	National Police Service Commission	Amend Clause 12(1) to cater for unforeseen acts of rogue elements	The provisions places all the liability for damages to property arising from demonstrations on organizers.
	Kenya Conference of Catholic Bishops	<ul style="list-style-type: none"> - Amend it so that liability is strictly personal. - Remove all liability against an organization or person convening the assembly or demonstration 	This provision is open to abuse by law enforcers. This section will infringe on the constitutional right to peacefully assemble and demonstrate due to the risks that will be associated with liability of actions done by others.
	Katiba Institute	Deletion of Clause 12	<ul style="list-style-type: none"> - Creating an excessive burden on right holders severely limits exercising a right. - The civil liability threat creates a chilling effect on the right.
	Transparency International	Clause 12(1)	<ul style="list-style-type: none"> - This is a punitive clause that seeks to limit exercise of the right under article 37, without establishing the relation between the limitation and its purpose, as

			<ul style="list-style-type: none"> - required under article 24(1) (e) of the Constitution. - The obligation to protect life and property under the Constitution lies with the National Police Service.
	Law Society of Kenya	Delete Clause 12	<ul style="list-style-type: none"> - introduces a prohibitive and unreasonable financial burden on citizens intending to hold a demonstration - Unconstitutional so far as it places a blanket liability on all demonstrators,
	Kenya Civil Society Organizations	Deletion of Clause 12(1)	<ul style="list-style-type: none"> - The Clause places a burden upon the citizen to justify their exercise of a fundamental right rather than placing the burden upon the state.
	Police Reforms Working Group	Delete clause 12	<ul style="list-style-type: none"> - Limits the right to assemble as per Article 37 - Placing a huge responsibility on organizers in an unfair restriction of their freedom to assemble.

			<ul style="list-style-type: none"> - Organizers should not be held criminally liable for crimes unless they have committed the crimes.
	ARTICLE 19 Eastern Africa	Delete subclause 1	<ul style="list-style-type: none"> - The law is clear on specific actions which bring about offences. The organizers should not be held vicariously liable for actions they have not facilitated. - The police maintain the general role of maintaining peace and promoting security during demonstrations.
		Delete the last part of subclause 2	<ul style="list-style-type: none"> - The burden of proof always lies with the claimant/prosecutor, not the person alleged to commit the crime
	Nabwire Obara Advocates	Delete clause 12(1) and (b)	<ul style="list-style-type: none"> - Imposing liability on organizers seems intended to discourage or prevent the organizing and holding of assemblies altogether.
13. Powers of the police during assembly or demonstration	Hannah Wamuyu	Amend clause 13(d) to provide circumstances under which police may act and define persons against whom actions may be taken	<ul style="list-style-type: none"> - Gives room for police to harass even those not participants. - Any action police take should be guided by the law and not discretion.

<p>During the conduct of an assembly or demonstration, the police may—</p> <p>(a) prevent the participants from proceeding to a different place or from deviating from the route specified in the relevant notice or from disobeying any specified condition;</p> <p>(b) restrict the gathering to a place or guide the participants along a route to ensure—</p> <p>(i) that vehicular or pedestrian traffic is not interfered with;</p>			
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<p>(ii) an appropriate distance between participants in the assembly and rival assemblies;</p> <p>(iii) access to property and workplaces;</p> <p>(iv) the prevention of injury to persons or damage to property.</p> <p>(c) order any participant interfering or attempting to interfere with an assembly or demonstration to cease and to remain at a distance from such assembly or demonstration.</p>			
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<p>(d) take such steps as may be necessary to protect persons and property, whether or not they are participants in the assembly or demonstration.</p>			
	<p>Kenya ICT Action Network (KICTANet)</p>	<ul style="list-style-type: none"> - Limit police powers to disperse assemblies to situations where there is an immediate and credible threat to public safety. - Introduce mandatory de-escalation procedures. - Ensure that dispersal of assemblies is a measure of last resort, used only when there is a clear and present danger that cannot be addressed through less restrictive means. 	<ul style="list-style-type: none"> - Such broad powers increases the risk of arbitrary enforcement and excessive force which has been historically abused - The African Commission's guidelines on Freedom of Association and Assembly stress that force should only be used as a last resort and must be proportional
	<p>Kenya National Commission on Human Rights (KNCHR)</p>	<ul style="list-style-type: none"> - Add an express provision that states that the law enforcement officials have a duty to refrain from using force when policing 	<p>In line with the African Commission General Comment 3: The Right to Life (art 4).³⁶ Also in accordance with Resolution on the Right to</p>

		<p>assemblies; that the use of force should be the last resort, and only when is necessary and proportionate response to the behaviour of the protesters.</p> <ul style="list-style-type: none"> - Where some participants are violent, the obligation to facilitate and protect those assembling peacefully remains. 	Peaceful Demonstrations, ACHPR/Res.281 (LV) 2014.37
	National Police Service Commission	Amend Clause 13 to clearly define the safety concerns to be addressed by the provision	The provision grants sweeping powers upon the police to impose conditions on demonstrators
	Law Society of Kenya	<p>Addition of the following sub section 2 after 13(d)</p> <p><i>“If a member of the Police officer has reasonable grounds to believe that danger to persons and property, as a result of the gathering or demonstration, cannot be averted by the steps referred to in subsection (1) if the gathering or demonstration proceeds, the Police or such member, as the case may be, may and only then, take the following steps: -</i></p> <p><i>(i) Call upon the persons participating in the gathering or demonstration to disperse, and for that purpose he shall endeavour to obtain the attention of those</i></p>	<ul style="list-style-type: none"> - provides a clear procedure for police officers to follow if they believe that a gathering or demonstration poses a significant risk to public safety or property. - ensure that actions taken are based on established protocols, which enhances safety and minimizes harm and ensures the protection of human rights. - Proportional response. This balance is crucial in upholding the right to peaceful assembly while maintaining public order

		<p>persons by such lawful means as he deems most suitable, and then,</p> <p>(ii) in a loud voice order, them in at least two of the official languages and, if possible, in a language understood by the majority of the persons present, to disperse and to depart from the place of the gathering or demonstration within a time specified by him, which shall be reasonable.</p> <p>(b) If within the time so specified the persons gathered have not so dispersed or have made no preparations to disperse, such a member of the Police may order the members of the Police under his command to disperse the persons concerned and may for that purpose order the use of force, excluding the use of weapons likely to cause serious bodily injury or death.</p> <p>(c) The degree of force which may be so used shall not be greater than is necessary for dispersing the persons gathered and shall be proportionate to the circumstances of the case and the object to be attained.</p>	
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	Kiambu Justice and Information Technology (KIJIN)	Renumber clause 13 to 13(a)(b)(c)(d) An additional clause 13(2) to read 'a police officer shall not use more force than is reasonable such as use of irritants and water cannons to manage a demonstration or assembly except only as a measure of last resort'	<ul style="list-style-type: none"> - To give room for additional clauses - To limit excessive force used by police when controlling protestants.
	ARTICLE 19 Eastern Africa	Amend to add an express provision that states that the law enforcement officials have a duty to refrain from using force when policing assemblies; that use force should be the last resort and only when necessary and proportionate response to the behaviour of the protestors.	<ul style="list-style-type: none"> - To justify the right to life - Where some participants are violent, the obligation to facilitate and protect those assembling peacefully remains with the police.
	Police Reforms Working Group- Kenya	Dele Subclause 1 and 2	<ul style="list-style-type: none"> - The primary role of police in assemblies is to provide security and maintain law and order when necessary. - The general conduct of the police is governed by existing statutes
14.Offences and penalties. (1) A person shall not– (a) convene a public assembly with no or adequate notice,	Hannah Wamuyu	Review Clause 14(2) which prescribes sentencing in mandatory terms.	Interferes with the discretion of the court

(b) knowingly contravene or fail to comply with the notice of a condition to which an assembly or demonstration is subject to, (c) hinder, interfere with, obstruct or resist a police officer, convener, marshal or any other person in the exercise of his powers or the performance of his duties under this Act, or

(d) be in possession of a weapon or any object unlawfully during an assembly or demonstration

<p>(2) A person who contravenes the provisions of subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding one year, or to both</p>			
	<p>National Police Service Commission</p>	<p>Make it an offence to injure police officers or cause damage to police property.</p>	<p>Rights of demonstrators should not extend to taking away the rights of police officers</p>
		<p>Have a clear provision on noise during assemblies and demonstrations</p>	<p>Prevent noise pollution during assemblies and demonstrations</p>
	<p>Kenya ICT Action Network (KICTANet)</p>	<p>- Decriminalise and remove criminal penalties for participation in assemblies, the Penal Code and Public Order Act unless linked to acts of violence or serious unlawful conduct.</p>	<p>Criminalisation disproportionately impacts public and discourages civic engagement</p>

		- Introduce administrative remedies and warnings before considering prosecution	
	Katiba Institute	Delete Clause 14	<ul style="list-style-type: none"> - The principle of proportionality would favour the retention of the fine but the deletion of the imprisonment. - The criminalisation of the failure to give notice is an unjustifiable violation of the right to demonstrate.
	Transparency International	Amend clause 14(1)(a) to provide that: <i>A person shall not convene a planned and organized public assembly with no or adequate notice.</i>	Fails to consider spontaneous assemblies which are recognized under the Constitution and protected under international law.
	Law society of Kenya	Delete Paragraph 14(1)(a)	<ul style="list-style-type: none"> - It is already pre- judicial to the organizers of protests and peaceful assembly and thus poses a significant threat to freedom of assembly.
		Amend Clause 14(2) to read to read as follows: <i>A person who contravenes the provisions of subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one thousand shillings or to imprisonment for a period not exceeding one month or to a proportionate penalty anchored on the principles of green justice system.</i>	Protest, assembly and/or demonstration is not a crime thus punitive measures should not be imposed on citizens.

	Police Reforms Working Group- Kenya	Delete Subclause (1) and (b) In clause 14(1)(d) be amended to add the definition of weapon/object	<ul style="list-style-type: none"> - Definitions ensure clarity and precision in legal language, reducing ambiguity and misinterpretation.
		Amend Clause 14(2) to maintain line with Clause 14(1)	<ul style="list-style-type: none"> - Introducing unnecessary offences targeting peaceful protestors will potentially transform individuals exercising their fundamental freedom into being perceived as criminals.
	WeCare Community-Based Organization	Define 'inadequate notice'	<ul style="list-style-type: none"> - The term is too broad and could lead to arbitrary enforcement
		This prohibitions should be reviewed to ensure that they do not infringe the right to assemble, address concerns related to police conduct and consider a balance between security and civil liberties	<ul style="list-style-type: none"> - Failure to comply with conditions. The imposition of conditions could lead to undue restrictions, especially if conditions are unreasonable or excess. The enforcement of conditions could lead to undue restrictions. - Obstruction or resistance to law enforcement. The prohibition against hindering or obstructing police officers, conveners, marshals, or others needs to be carefully defined to avoid overly broad interpretations. - Possession of weapons or objects Weapons and objects need to be defined Demonstrators may possess items for self defense.

<p>15. Regulations.</p> <p>(1) The Cabinet Secretary may make regulations for the better carrying into effect the provisions of this Act.</p> <p>(2) For the purposes of Article 94(6) of the Constitution —</p> <p>(a) the purpose and objective of delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect of the</p>			

<p>provisions of this Act;</p> <p>(b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and to fulfil the objectives specified under this section; and</p> <p>(c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.</p>			
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<p>16. Repeal of sections 5 6 of Cap 56.</p> <p>The Public Order Act is amended by repealing section 5, and repealing section 6</p>	<p>Hannah Wamuyu</p>	<p>Remove</p>	<p>It sanctions the harassment and abduction of protests by people carrying weapons and purporting to execute orders from above.</p>
	<p>Law Society of Kenya</p>	<p>should be done through Statute Law (Miscellaneous Amendment) Bill</p>	<p>Provision is ideal</p>