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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT –THIRD SESSION

COMMITTEE ON NATIONAL COHESION AND EQUAL OPPORTUNITY

**REPORT ON THE CONSIDERATION OF THE NATIONAL COHESION AND
INTEGRATION BILL, 2023**

(NATIONAL ASSEMBLY BILLS NO. 74 OF 2023)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 19 SEP 2024	
DAY: THURSDAY	
TABLED BY:	HON. JUSUF HASI, MP CHAIRPERSON COMMITTEE ON NATIONAL COHESION & EQUAL OPPORTUNITY
CLERK-AT THE-TABLE:	VIVIAN WAMBUI

**DIRECTORATE OF AUDIT, APPROPRIATION
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CLERK'S CHAMBERS

PARLIAMENT BUILDINGS

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LIST OF ABBREVIATIONS AND ACRONYMS

EOP	Executive Office of the President
JSC	Judicial Service Commission
NCIC	National Cohesion and Integration Commission
NGEC	National Gender and Equality Commission
NPSC	National Police Service Commission
OAG	Office of the Attorney General
PWD	Persons With Disabilities

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CHAIRPERSON'S FOREWORD

This report contains proceedings of the Committee on National Cohesion and Equal Opportunity on its consideration of the National Cohesion and Integration Bill, 2023 (National Assembly Bill No. 74 of 2023). The Bill was published on 30th November, 2023 and read for a First Time on 20th March 2024. The Bill was thereafter committed to the Committee on National Cohesion and Equal Opportunity for consideration and reporting to the House pursuant to Standing Order 127.

The Bill has ninety clauses and three schedules and seeks to repeal and replace the National Cohesion and Integration Act, 2008 to align its provisions with the present constitutional dispensation and structure of government by giving effect to Articles 10 and 27 of the Constitution on the promotion of national unity and non-discrimination.

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee placed advertisements in the print media on 23rd March, 2024, inviting the public and stakeholders to submit written memoranda on the Bill on or before 5th April, 2024. The Committee received memoranda from various stakeholders including the National Cohesion and Integration Commission (NCIC), the National Gender and Equality Commission (NGEC), Office of the Director of Public Prosecution and the Office of the Attorney-General.

Further, the Committee held public hearings in Kisumu, Kakamega, Lamu, Mombasa, Kwale, Garissa, Nyeri, Kirinyaga, Murangá, Makueni, Nandi, Uasin Gishu and Homa bay counties between 3rd and 8th June, 2024, to collect views from the public on the Bill.

The committee has agreed with stakeholders in Clause 47 to broaden the definition of “hate speech” to encompass coded language and the vilification of others. A person who uses threatening, abusive, insulting, or vilifying words or behavior, displays any written material, or disseminates any ideas based on ethnic superiority, or uses coded language, acts, or makes gestures depicting ethnic hatred is said to have committed hate speech.

The Committee agrees with stakeholders in Clause 47 to expand the definition of “hate speech” to include coded language and vilification of others. A person who uses threatening, abusive, insulting, vilifying words or behaviour, displays any written material or disseminates any ideas

based on ethnic superiority or uses coded language, acts or makes gestures depicting ethnic hatred is said to commit hate speech.

The Committee recognizes the importance of integrating peacebuilding into the Bill. As a result, the Committee endorses amending Clause 5 to include the following functions of the Commission: creating a monitoring and tracking system for all peacebuilding projects in the country, establishing ethical standards for individuals involved in peacebuilding projects, and urging national and county governments to allocate funds for peacebuilding initiatives.

In relation to actions by the Commission after an inquiry, the Committee is in agreement with stakeholders that under clause 69 of the Bill, where an inquiry discloses a criminal offence, it authorizes the Commission to refer the matter to the Office of the Director of Public Prosecution or any other relevant authority.

Regarding actions by the Commission following an inquiry, the Committee agrees with stakeholders that according to clause 69 of the Bill, if an inquiry reveals a criminal offense, it allows the Commission to refer the matter to the Office of the Director of Public Prosecutions or any other relevant authority.

A proposal was made by stakeholders to have male representatives elected for a county, in addition to having women representatives. However, the committee did not adopt this proposal. This is because the women's representative seat is part of broader affirmative action initiatives in the Constitution, which aim to promote women's involvement in decision-making at all levels of government. The women's representative seat provides a direct path to political leadership at the county level, complementing other efforts to increase women's participation in political processes.

The Committee extends its sincere gratitude to the Office of the Speaker of the National Assembly and the Clerk of the National Assembly for their invaluable logistical and technical support throughout its sittings. Their assistance facilitated the Committee's deliberations and ensured the smooth progress of its work. The Committee, in a special way, acknowledges and appreciates the participation of all stakeholders and members of the public who diligently submitted their comments on the Bill. Their insights and contributions have enriched the Committee's understanding of the various perspectives on the proposed measures. Further, I wish to express my heartfelt appreciation to the Honourable Members of the Committee and the dedicated Committee

Secretariat whose commitment, expertise and collaborative efforts were instrumental in preparing and producing this report.

A handwritten signature in blue ink, consisting of a series of vertical strokes followed by a horizontal line that loops back to the left.

**HON. YUSSUF ADAN HAJI, MP.
CHAIRPERSON, COMMITTEE ON NATIONAL COHESION AND EQUAL
OPPORTUNITY**

ACKNOWLEDGMENT

The Committee extends its sincere gratitude to the Office of the Speaker of the National Assembly and the Clerk of the National Assembly for their invaluable logistical and technical support throughout its sittings. Their assistance facilitated the Committee's deliberations and ensured the smooth progress of its work.

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Further, the Committee wishes to express its heartfelt appreciation to the Honourable Members of the Committee and the dedicated Committee Secretariat whose commitment, expertise and collaborative efforts were instrumental in preparing and producing this report. I particularly commend the Secretariat for their diligent work that enabled the Committee to fulfill its constitutional mandate by providing a thorough analysis of the National Cohesion and Integration Bill, 2023 (National Assembly Bill No. 74 of 2023) to the Committee.

On behalf of the Committee on National Cohesion and Equal Opportunity and pursuant to Standing Order 199 (6), it is my pleasure to report that the Committee has considered the National Cohesion and Integration Bill, 2023 (National Assembly Bills No.74 of 2023) and has the honour to report back to the National Assembly with the recommendation that the Bill be **approved with amendments as reported by the Committee.**

PART ONE

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Committee on National Cohesion and Equal Opportunity is established under the Standing Order 212C of the National Assembly.
2. The mandate of the Committee is as follows—
 - (a) To monitor and promote measures relating to policy and program initiatives in pursuit of peace and national cohesion;
 - (b) To investigate, inquire into and report on all matters relating to inter community cohesion;
 - (c) To monitor and promote measures designed to enhance the equalization of opportunities and improvement in the quality of life and status of all persons, including persons who are marginalized on the basis of gender, age, disability, health status, ethnic, racial, cultural or religious background or affiliation or any other such ground;
 - (d) To investigate, inquire into and report on all matters relating to discrimination and or marginalization of persons referred to under sub-paragraph(c);
 - (e) To make proposals to Parliament including legislative proposals for the protection, equalization of opportunities and promotion of the welfare of the groups referred to under sub-paragraph (c); and
 - (f) To examine the activities and administration of all state departments and statutory bodies in so far as they relate to the rights and welfare of the persons referred to under sub-paragraph (c).

1.2 Committee Membership

The Select Committee on National Cohesion and Equal Opportunity comprises of the following Members—

	Name	Constituency	Party
1.	Hon. Yussuf Adan Haji, DSM, MP. (Chairperson)	Mandera West	United Democratic Movement (UDM)
2.	Hon. Liza Chelule Chepkorir, MP. (Vice-Chairperson)	Nakuru (CWR)	United Democratic Alliance (UDA)
3.	Hon. Yusuf Hassan Abdi, MP.	Kamukunji	Jubilee Party (JP)
4.	Hon. Charles Kamuren, MP.	Baringo South	United Democratic Alliance (UDA)
5.	Hon. Charles Ong'ondo Were, MP.	Kasipul	Orange Democratic Movement (ODM)
6.	Hon. Edward Oku Kaunya, MP.	Teso North	Orange Democratic Movement (ODM)
7.	Hon. Joseph Samal Lomwa, MP.	Isiolo North	Jubilee Party (JP)
8.	Hon. Martin Peters Owino, MPH, MP.	Ndhiwa	Orange Democratic Movement (ODM)
9.	Hon. Eng. Paul Nzengu, MP.	Mwingi North	Wiper Democratic Movement Kenya (WDM-K)
10.	Hon. Agnes Mantaine Pareyio, MP.	Narok North	Jubilee Party (JP)
11.	Hon. Duncan Maina Mathenge, MP.	Nyeri Town	United Democratic Alliance (UDA)
12.	Hon. Fredrick Lusuli Ikana, MP.	Shinyalu	ANC Party
13.	Hon. Irene Nyakerario Mayaka, MP.	Nominated	Orange Democratic Movement (ODM)
14.	Hon. Jane Wangechi Kagiri, MP.	Laikipia (CWR)	United Democratic Alliance (UDA)
15.	Hon. Joseph Hamisi Denar, MP.	Nominated	ANC Party
16.	Hon. Joseph Iraya Wainaina, MP.	Nominated	United Democratic Alliance (UDA)
17.	Hon. Mary Maingi, MP.	Mwea	United Democratic Alliance (UDA)
18.	Hon. Monicah Muthoni Marubu, MP.	Lamu (CWR)	Independent
19.	Hon. Onesmus Ngogoyo Nguro, MP.	Kajiado North	United Democratic Alliance (UDA)

	Name	Constituency	Party
20.	Hon. Teresia Wanjiru Mwangi, MP.	Nominated	United Democratic Alliance (UDA)

1.3 Committee Secretariat

The secretariat supporting the Committee is comprised of the following officers-

Ms. Naserian Lotuai

Clerk Assistant I

Ms. Kathleen Nanzala

Clerk Assistant III

Mr. Alex Amwata

Hansard Reporter

Ms. Audrey Andala

Legal Counsel II

Mr. Peter Atsiaya

Media Relations Officer

Ms. Joanne Naneu

Research Officer III

Ms. Lilian Aluga

Public Communications Officer

Mr. John Ng'anga

Audio Officer

Mr. Luka Mutua

Sergeant-at-Arms

PART TWO

2.0 OVERVIEW OF THE NATIONAL COHESION AND INTEGRATION BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 74 OF 2023)

2.1 Introduction

3. The **National Cohesion and Integration Bill, 2023** is a Bill sponsored by the **Chairperson of the Committee on National Cohesion and Equal Opportunity, Hon. Adan Haji Yusuf, MP**.
4. The objective of the Bill is to repeal and replace the National Cohesion and Integration Act, 2008 to align its provisions with the present constitutional dispensation and structure of government by giving effect to Articles 10 and 27 of the Constitution on the promotion of national unity and non-discrimination.
5. The Bill underwent **first reading on 20th March, 2024** and was committed to the Committee on National Cohesion and Equal Opportunity for purposes of conducting public participation pursuant to Article 118 of the Constitution and Standing Order 127 of the National Assembly.

1.2 Salient Clauses of The National Cohesion and Integration Bill, 2023

2. **Clause 3** of the Bill consist of the objectives of the Act which is to give effect to Articles 10 and 27 of the Constitution on the promotion of national unity and non-discrimination. It further seeks to provide a framework for the promotion of national cohesion, unity and peace-building.
3. **Clause 4** of the Bill provides for the establishment of the National Cohesion and Integration Commission comprising of a chairperson and eight other members nominated by the President for appointment and approved by the National Assembly.
4. **Clause 5** outlines the functions of the National Cohesion and Integration Commission which is to develop policies for the promotion of national values and principles of governance. This is in addition to formulation and implementation of strategies, plans, educational and training programmes to create public awareness and support on the importance of national unity. Further, the Commission is mandated to establish early warning and early response system on

conflict and put in place an emergency preparedness and response system to curb imminent conflict.

5. **Clause 10** stipulates for the headquarters of the Commission to be in Nairobi but mandates the Commission to establish nine regional offices in the country. It mandates the Commission to ensure that its services are accessible to all parts of the country and to establish branches in each county.
6. **Clause 12** of the Bill provides for the qualifications of and disqualification for appointment as a chairperson and member of the Commission. It requires that a person be a citizen of Kenya, hold a degree from a university recognized in Kenya, have knowledge and at least 10 years of experience for the Chairperson and 2 years for the members in matters relating to race, ethnic and human relations, public affairs and human rights, peace and security and meet the requirements of Chapter Six of the Constitution.
7. **Clause 15** of the Bill provides for a term of office of the Chairperson and members, which is three years with a possibility of reappointment for one further term.
8. **Clause 17** of the Bill provides for the procedure of removal from office of a commissioner. This is by a person presenting a petition to the President through the Cabinet Secretary, who shall then forward the Petition to the relevant Committee of the National Assembly within seven days. The Committee is to inquire into the matter report on the facts to the President through the Cabinet Secretary, giving its recommendations as to whether the Commissioner ought to be removed or not.
9. **Clause 38** of the Bill addresses ethnic discrimination. It defines instances where a person may be considered to have discriminated against another, either directly or indirectly. This can occur if a person treats another person less favorably on ethnic grounds than they would treat someone else. It also applies if a person imposes a requirement or condition on another person that would not be justifiable, regardless of the person's color, race, nationality, or ethnic or national origins, and this requirement or condition cannot be met by that person.
10. **Clause 39** of the Bill makes provision for discrimination through victimization, which occurs when a person carries out an act that is injurious to the well-being and esteem of that person by treating that person less favourably than other persons on grounds that the person discriminated against intends to or has brought proceedings under the Act, given evidence or information in

connection with proceedings under the Act, alleged that a person has committed an act which would amount to contravention of the Act or done anything under the Act in relation to any person.

11. **Clause 40** of the Bill makes provision for harassment on the basis of ethnicity which occurs where a person engages in unwanted conduct which has the purpose or effect of violating that other person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that other person.
12. **Clause 41** of the **Bill provides for discrimination in employment**. It requires every public entity to ensure representation of the diversity of the people of Kenya in the employment of staff and to afford adequate and equal opportunities for appointment, training and promotion at all levels of public service to members of all ethnic groups. It bars a public entity from recruiting or having in its employment **more than one fifth** of its staff from the same ethnic community. It further prohibits an employer or potential employer or their representatives from discriminating against another person in arrangements made for the purpose of determining who should be offered the employment and in the terms the employer offers employment.
13. **Clause 42** of the Bill provides for exceptions in discrimination in employment and proposes that it shall not be deemed discriminatory where the job involves cultural entertainment in a capacity for which a person of that ethnic group is required for reasons of authenticity, the job involves a work of art, visual image or sequence of visual images for which a person of that ethnic group is required for reasons of authenticity or the holder of the job provides for a person of that ethnic group with personal services promoting their welfare and those services can most effectively be provided by a person of that ethnic group.
14. **Clause 43** of the Bill provides for discrimination in the membership of an organisation. It prohibits an official, member, employee, assign or representative of a registered organisation from discriminating against a person who is not a member in the terms in which it is prepared to admit the person to membership or by refusing or deliberately omitting to accept the person's application for membership. It also makes it unlawful for a membership organisation to subject to harassment a member or a person applying for membership on the grounds of ethnicity.
15. **Clause 44** of the Bill provides for discrimination by other agencies. It prohibits a public or private entity from discriminating against any person in the provision of its services. However,

this does not apply where it is proven that the alleged discriminatory act is a necessary requirement in the nature of business transaction and that there is no alternative way of realising the desired goal.

16. **Clause 45** of the Bill makes provisions for discrimination in access to and distribution of resources. It mandates that public resources shall as far as practicable, be distributed equitably and geographically considering Kenya's diversity, population and poverty index.
17. **Clause 46** of the Bill provides for discrimination in property ownership, management and disposal. It defines a manager as a person who has power to control, lease, let or dispose of public property or property that is wholly meant for use by the public. It makes it unlawful for a manager to discriminate against another person in the terms such a manager offers, lets, manages or disposes the property to another person.
18. **Clause 47** of the Bill provides for racial or ethnic contempt. It provides for actions that amount to ethnic contempt and makes it an offence if the person intends to stir up ethnic hatred, or having regard to all other circumstances, ethnic hatred is likely to be stirred up. These actions are where a person uses threatening, abusive or insulting words or behaviour or displays any written material, publishes, posts or distributes material in print, electronic or social media, presents or directs the performance of a play to the public, distributes, shows or plays a recording of visual images or provides, produces or directs a programme, which is threatening, abusive or uses insulting words or behaviour.
19. **Clause 48** of the Bill provides for exceptions to discrimination. The Bill does not consider unlawful an act done to afford a person of a particular ethnic group access to facilities or services to meet the special needs of such a person in regard to their education, training or welfare or other ancillary benefits or on grounds other than race, ethnic or national origin for the benefit of a person who is not a Kenyan citizen to afford that person access to the facilities for education or training or other ancillary benefits, where it appears that the person in question does not intend to remain in Kenya after the period of education or training.
20. **Clause 50** of the Bill provides for persons who may make complaints to the Commission. They are a person acting in their own interest, a person acting on behalf of another person who cannot act in their own name, a person acting as a member of a group or class of persons, a person acting in the public interest or an association acting in the interest of one or more of its members.

Further a complaint may be made by or against an individual, a body of persons whether corporate or unincorporated, a public or private organisation, the Government or a specific body or officer of the government.

21. **Clause 51** of the Bill provides for the manner of lodging a complaint, which may be orally or in writing. Where a complaint is made orally, the Bill mandates the Commission to cause the complaint to be reduced into writing. The complaint is to be in such a form.
22. **Clause 52** of the Bill provides for complaints not to be entertained by the Commission. It empowers the Commission to decline to entertain a complaint if it considers that a complaint is frivolous, vexatious, misconceived or lacking in substance, involves a subject matter that would be more appropriately dealt with by a court or involves a subject matter that has been adequately dealt with by the Court.
23. **Clause 53** of the Bill provides for an application to strike out a complaint. The Respondent may apply in writing to the Commission to have a complaint or any part of it struck out on the grounds that it is frivolous, vexatious, misconceived or lacking in substance.
24. **Clause 54** of the Bill provides for dismissal of stale complaint. It authorises the Commission to dismiss a complaint and notify the complainant if the Commission has had no substantive response from the complainant in the period of twelve months following a request by the Commission for a response in relation to the complaint.
25. **Clause 55** of the Bill provides for referral of matters to the Commission by the Cabinet Secretary, if the Cabinet Secretary considers that the matter raises an issue of important public policy, whether or not a complaint has been lodged or the Commission has considered the complaint or the complaint is in the process of conciliation.
26. **Clause 56** of the Bill provides for alternative dispute resolution mechanisms. It gives the Commission power to establish *ad hoc* or standing peace committees comprising representatives of affected ethnic groups and experts where necessary, power to establish mediation committees and power to involve traditional justice mechanisms relevant to a particular community, local administration and relevant national and county government agencies in managing conflicts and resolving disputes where it deems appropriate.
27. **Clause 57** of the Bill gives the Commission the power to refer complaints for conciliation.

28. **Clause 58** of the Bill provides for conciliation by the Commission. It mandates the Commission to make all reasonable endeavors to conciliate a complaint referred to it under clause 57 and by written notice require any person to attend before the Commission for the purpose of discussing the subject matter of the Complaint or to produce any documents specified in the notice.
29. **Clause 59** of the Bill provides for conciliation agreements. It requires after the satisfactory determination of the conciliation, the conciliator to cause both parties to sign the settlement agreement which shall be final and binding on the parties and enforceable as if it were a decision of the Commission
30. **Clause 60** of the Bill provides for where conciliation fails. It requires the Commission to set down a complaint for determination and issue a date on which a matter is to be heard where the conciliation fails or the parties or either of them objects to any conciliation efforts
31. **Clause 61** of the Bill provides for special references. It requires the Commission in exercising its powers to pay particular attention to and expedite the disposal of special references.
32. **Clause 62** of the Bill provides for matters the compliance notices issued under clause 69 of the Bill contain. The notices require the person concerned to comply with a duty specified in the notice and to inform the Commission, within thirty days of the date on which the notice is served of the steps that the person has taken, or is taking to comply with the duty specified in the notice.
33. **Clause 63** of the Bill provides for enforcement of compliance notices. It authorises the Commission to apply to the High Court for an order requiring a person to furnish any information required by the compliance notice if the person fails to furnish the information to the Commission in accordance with the notice or the Commission has reasonable cause to believe that the person does not intend to furnish the information.
34. **Clause 64** of the Bill provides for a prohibition notice. It authorises the Commission to issue a prohibition notice directing a person or entity involved in an action or conduct contrary to national cohesion, integration and peace building to cease such action or conduct within seven days.
35. **Clause 65** of the Bill provides for investigations by the Commission. It authorizes the Commission to conduct investigations pertaining to an inquiry and employ the services of a public officer or investigation agency of the government at the Commission's expense.

36. **Clause 66** of the Bill provides for a notice of discontinuation of investigations. If the Commission decides to discontinue the investigation of a complaint, the Commission is to inform the Complainant in writing of that decision and the reasons for that decision within thirty days of making the decision.
37. **Clause 67** of the Bill provides for notice of investigation to an organization. Before commencing investigations under the Act, the Commission is required to give notice of the intended investigation to the administrative head of a state organ, public office or organization.
38. **Clause 68** of the Bill provides for the requirement that a person likely to be prejudiced or affected to be heard at any stage of an inquiry by the Commission.
39. **Clause 69** of the Bill provides for action by the Commission after an inquiry. Where an inquiry discloses a criminal offence, it authorizes the Commission to refer the matter to the Office of the Director of Public Prosecution or any other relevant authority.
40. **Clause 70** of the Bill provides for reports to an organisation and requires that after concluding an investigation or an inquiry under the Act, the Commission should make a report to the state organ, public office or organisation to which the investigation relates. The matters to be included in the report are the findings of the investigation and any recommendations made by the Commission, the action the Commission considers should be taken and the reasons for the action and any recommendations the Commission considers appropriate.
41. **Clause 71** of the Bill provides for hearings of the Commission during an inquiry, which are to be open to the public except where the Commission for a justifiable reason decides otherwise.
42. **Clause 72** of the Bill provides for offences under the Act. It creates five offences.
43. **Clause 73** of the Bill provides for offences by a body of persons. Where the body of persons is a body corporate, every director of that body corporate shall also be deemed to be guilty of that offence and where that body of persons is a firm, every partner of the firm shall be deemed to be guilty of the offence.
44. **Clause 74** of the Bill provides for the code of conduct for the members and staff of the Commission. It requires the staff and members of the Commission to keep and maintain professional and ethical standards and to adhere to and comply with the Commission's Code of Conduct.
45. **Clause 75** of the Bill provides that the Act binds the Government.

46. **Clause 76** of the Bill provides for legal proceedings against the Commission. It provides for the deeming of proceedings against the Commission as proceedings against the Government and therefore subject to the Government Proceedings Act, Cap. 40.
47. **Clause 77** of the Bill provides for confidentiality of information. It bars any person from either directly or indirectly disclosing, communicating or making a record of any information obtained during the performance of their functions or duties under the Act, unless it is necessary to do so for the purpose of or in connection with the performance of a function or duty or the exercise of power under the Act or any other written law.
48. **Clause 78** of the Bill provides for protection of witnesses and information. It removes personal liability from a person who lodges a complaint or produces a document or evidence to the Commission for any loss, damage or injury suffered by another person by reason only of the lodging of the complaint or the production or giving of the document, information or evidence.
49. **Clause 79** of the Bill provides for statements made by persons to the Commission, and precludes a person from civil or criminal liability for statements made in the course of giving evidence before the Commission, except where such statement is false.
50. **Clause 80** of the Bill provides for offences by members of staff. These are, causing anything to be done through another person that would constitute contravention of the Act if done by him or her or allowing or directing a person under their supervision or control to do anything that is in contravention of the Act.
51. **Clause 81** of the Bill provides for reporting of improper orders. It allows a public officer or member who considers that anything required of them is in contravention of the Act or any other Act or is improper or unethical to report the matter to the Commission.
52. **Clause 82** of the Bill provides for the general penalty for offences where the penalty is not specifically provided. The penalty is a fine not exceeding one million shillings or a term of imprisonment not exceeding one year or both.
53. **Clause 83** of the Bill provides for review of the decision of the Commission. A person who is aggrieved by the decision of the Commission may apply for a review of that decision within 14 days of that decision and requires the Commission to determine and communicate its decision to the Appellant.

54. **Clause 84** of the Bill provides for regulations. It authorises the Cabinet Secretary in consultation with the Commission, to make regulations for the effective implementation of the Act.
55. **Clause 85** of the Bill repeals the National Cohesion and Integration Act, Cap. 7N.
56. **Clause 86** of the Bill provides for the meaning of the term “Former Commission” as used in the transitional provisions to mean the National Cohesion and Integration Commission established under the National Cohesion and Integration Act, Cap. 7N.
57. **Clause 87** of the Bill provides for the rights and obligations of the former Commission and deems all rights, obligations and contracts vested or imposed by the former commission to be the rights of the Commission (now established).
58. **Clause 89** of the Bill provides for the Secretary of the former Commission. It retains the person who was the Secretary of the former Commission as the Secretary of the Commission in accordance with the terms and conditions of their appointment.
59. **Clause 90** of the Bill deems the staff of the former Commission who are not under notice of dismissal or resignation as the staff of the Commission.
60. **The First Schedule** outlines the procedure for appointment of a Commissioner pursuant to Clause 11. It provides for the steps and timelines for when a vacancy occurs in the Commission. It also provides for the establishment of a selection panel consisting of seven persons and for the role of the Public Service Commission in the selection panel. It provides the timeline for advertisement of vacancies and the period for submission of applications. It provides for the publication of the names of the applicants and requires that a shortlist of 15 persons be forwarded to the President, who shall then appoint seven persons and forward the names to the National Assembly. It requires the National Assembly to consider the nominations within twenty-one days and provides the procedure for when the National Assembly approves or rejects the nominees. It also provides for gazettelement of the nominees by the President. It authorises the Selection Panel to determine its procedure and sets out the principles to be observed while making appointments to the Commission. Lastly it authorises the Cabinet Secretary to extend time for any matter for a period not exceeding 21 days.
61. **The Second Schedule** provides for the form of oath / affirmation for the Chairperson, Members and Secretary pursuant to clause 13.

62. **The Third Schedule** provides for the Conduct of Business and Affairs of the Commission pursuant to clause 21. It provides for general meetings, special meetings, quorum at meetings, who is to preside over meetings, the manner of reaching decisions, invalidity of proceedings of the Commission, the manner of authentication of the common seal of the Commission and minutes of the proceedings and meetings of the Commission.

PART THREE

3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION

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

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

64. The National Assembly Standing Order 127 (1) (2) and (3A) stipulates that –

“(1)A Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question put.

(2) Notwithstanding paragraph (1), the Assembly may resolve to commit a Bill to a select committee established for that purpose.

“(3) 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.

(3A). The Departmental Committee shall consider the views and recommendations of the public under paragraph (3) in its report to the House.”

3.2 STAKEHOLDER ENGAGEMENTS

65. The Committee placed an advertisement in the print media on 23rd March 2024, inviting the public to submit written memoranda on the Bill on or before 5th April, 2024 at 5:00p.m.

66. The Committee received written memoranda from the following stakeholders—

- (i) The Executive Office of the President;
- (ii) The National Cohesion and Integration Commission;
- (iii) The Office of the Attorney General;
- (iv) The National Gender and Equality Commission;
- (v) The National Police Service;
- (vi) The Judicial Service Commission; and
- (vii) The Office of the Director of Public Prosecution.

67. Further, the Committee conducted public hearings where members of the public presented their views on the Bill to the Committee. The public hearings included meetings in Kisumu,

Homabay, Kakamega, Uasin Gishu, Nandi, Mombasa, Kwale, Lamu, Nyeri, Kirinyaga and Kitui.

3.3 WRITTEN SUBMISSIONS FROM STAKEHOLDERS

The feedback received from the interactions with stakeholders provided valuable input, highlighting specific concerns and suggestions for amendments. The following are the submissions on various clauses of the Bill—

3.3.1 Submissions by the Executive Office of the President (EOP)

68. The Executive Office of the President made the following written submissions—

69. The Executive Office of the President was of the view that the Bill contained provisions which encroach on the Constitutional mandate of H.E the President under Article 132 of the Constitution of Kenya.

Committee’s Observation/Recommendation.

The Committee observed that under Article 132 of the Constitution, the President shall report, in an address to the nation, on all the measures taken and the progress achieved in the realization of the national values referred to in Article 10. Clause 3 of the Bill seeks to give effect to Articles 10 and 27 of the Constitution on the promotion of national unity and non-discrimination. The Committee observed that there is no inherent collision between the President’s function under Article 132 and Clause 3 of the Bill that seeks to give effect to Articles 10 and 27. Instead, they are designed to work in harmony, with the Bill offering specific legislative steps and the President reporting on their progress. This aligns with the President’s broader constitutional responsibility to ensure that national values, as set out in Article 10, are upheld. The Committee therefore rejected this proposal.

Clause 3

70. The EOP submitted that the Bill cannot “give effect” to Articles 10 & 27 on only two (2) National values and principles of Governance. Instead, it should focus on promoting national values specific to the Commission’s mandate which include: national unity, inclusiveness, equality, equity and non-discrimination. They proposed the following amendment to Clause 3(a)–

3(a) promote the values under Article 10 on national unity, inclusiveness, equality, equity and non-discrimination; and Article 27 of the Constitution on national unity and non-discrimination.

Committee’s Observation/Recommendation.

The Committee observed that the Bill gives effect to Articles 10 and 27 of the Constitution on the promotion of national unity and non-discrimination. Article 10 and 27 addresses national unity, inclusiveness, equity and non-discrimination. Therefore, the Committee rejected this proposal because the Bill complements the functions under the Constitution.

Clause 5

71. It was further submitted that Clause 5 of the Bill assigns the Commission the function of developing policy, which is the function of line Ministries or State Departments and not Commissions. The Executive Office of the President proposed the deletion of Clause 5 (f) in its entirety as a function of the Commission. The functions of the National Cohesion and Integration Commission are enforcement/oversight and not policy development.

Committee’s Observation/Recommendation.

The Committee observed that a commission in Kenya can develop a policy and refer it to the relevant state department or cabinet secretary. This process is part of how commissions work within their mandates to influence broader government policy and action, the Committee therefore rejected this proposal.

72. The EOP submitted that promotion of National Values and principles of Governance is a critical constitutional mandate whose realization is one of the key functions of H.E. the President under Article 132 (1)(c) (i). Under this Article, the President is required to, once a year, report in an address to the nation, on all the measures taken and the progress achieved in the realization of the national values, referred to in Article 10. The EOP facilitates the delivery of this mandate. As part of this mandate, the EOP is responsible for developing and coordinating its implementation (Sessional Paper No.8 of 2013 on National Values and Principles of Governance). The function of developing policy on National Cohesion and Integration is assigned to the Ministry of Interior and National Administration.

Committee’s Observation/Recommendation.

The Committee observed that the promotion of National Values and Principles of Governance is a critical constitutional mandate that involves multiple actors, including the President, commissions, and other government entities. While the President has the overarching

responsibility, various commissions also play significant roles in promoting these values within their specific mandates. The Committee therefore rejected this proposal.

73. EOP recommended a review of the proposed functions of the Commission with a view of ensuring that they do not contradict the Constitution or duplicate functions performed by other institutions. Under Articles 131, 132, 232 and 234 of the Constitution, the mandates of promotion of National Values and Principles of Governance (Article 10) and Values and Principles of the Public Service (Article 232) are clearly assigned. The Commission should focus on enforcement and not policy making.

Committee’s Observation/Recommendation.

The Committee observed that a commission in Kenya can develop a policy and refer it to the relevant state department or cabinet secretary. This process is part of how commissions work within their mandates to influence broader government policy and action, the Committee therefore rejected this proposal.

3.3.2 Submissions by the National Cohesion and Integration Commission (NCIC)

74. The National Cohesion and Integration Commission made the following submissions—

75. Amend clause 5 of the Bill by inserting the following functions—

- (1) Oversee the implementation of peace building projects under this Act; In overseeing the implementation of peace building projects, the Commission shall —
 - (a) develop a monitoring and tracking mechanism for all peace building projects in the country;
 - (b) develop ethical standards to be adhered to by persons involved in peace building projects;
 - (c) undertake research and analyse and disseminate information, critical gaps and strategic priorities relevant to peace building in any particular region;
 - (d) systematically collect information on lessons learnt in peace building;
 - (e) advise persons involved in peace building projects on best practices for achieving lasting cohesion and integration in any particular area;
 - (f) advise the national and county governments on the most appropriate peace building interventions based on the existing circumstances of the local communities;

- (g) encourage national and county governments to allocate funding for peace-building initiatives;
 - (h) take measures to ensure that there is harmony in the peace-building projects undertaken in any particular area;
 - (i) take measures to ensure that persons involved in peace-building projects in the counties do not instigate, perpetuate or deepen instability or strife in any area;
- (2) Set standards to be adhered to by persons involved in the implementation of peace-building projects;
- (3) The Commission shall maintain a register of all peace-building projects within Kenya. A person who intends to engage in a peace-building project in Kenya shall notify the Commission of the project and give details about the project such as:
- (a) a description of the peace-building project or activity that the applicant intends to undertake;
 - (b) a statement of the place where the peace building project is to be carried out and the targeted community;
 - (c) a schedule of activities proposed to be undertaken in the peace building project;
 - (d) the time-frame of the peace building project;
 - (e) the source of financing for the project;
 - (f) a statement as to whether there is any conflict of interest;
 - (g) a statement as to whether the applicant has carried out any other peace building project within the targeted community and the outcome of that peace building project;
 - (h) the names of the officers in charge of the peace building project; and any other information that the Commission may require.

Committee's Observation/Recommendation

The Committee observed that it is important to include the functions of peacebuilding in the Bill. Their proposal was adopted by the Committee.

76. NCIC also recommended the retention of functions as envisaged in the NCI Act, 7N especially as it relates to; a. Investigating complaints of ethnic or racial discrimination b. Investigating on its own accord or on request from any institution, any issue affecting ethnic and racial

discrimination Making recommendations on penalties to be imposed on any person for any breach of the provisions of the Constitution or of any law dealing with ethnicity.

Committee's Observation/Recommendation

The Committee observed that it is important to include the functions of the Commission to investigate complaints of ethnic and racial discrimination. Their proposal was adopted by the Committee.

Clause 6

77. NCIC submitted that the Bill should retain powers as envisaged in the NCI Act, Cap. 7N Section 26 (2) (a) and (b): In the discharge of its functions under this Act, the Commission—

(a) shall not be subject to the direction or control of any other person or authority;

Committee's Observation/Recommendation

The Committee observed that oversight of the commission by another authority helps ensure that commissions are held accountable for their actions, promoting transparency and preventing misuse of power. The Committee rejected this proposal.

(b) shall publish the names of persons or institutions whose words or conduct may undermine or have undermined or contributed towards undermining good ethnic relations, or who are involved in ethnic discrimination or the propagation of ethnic hate.

Committee's Observation/Recommendation

The Committee observed that publishing names of persons or institutions whose conduct may have contributed to undermining good ethnic relations involves balancing the public interest and the right to information with individuals' rights to privacy and fair treatment. The proposal was rejected by the Committee.

Clause 8

78. NCIC recommended the introduction of new provisions as follows:

(a) Power to compel the attendance of witnesses to the commission

A person who fails to obey summons for the attendance as a witness or other persons or for the production of books, plans and other documents or who, having complied, refuses or fails to give his correct name and address and to answer truthfully all questions that may be lawfully put to him commits an offence and shall be liable on conviction to a fine

not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both.

Committee’s Observation/Recommendation

The Committee adopted this proposal to enable the Commission to compel the attendance of witnesses.

Clause 10

79. NCIC recommended that the words ‘administered by a commissioner’ be removed from Clause 10(2).

Committee’s Observation/Recommendation

The Committee observed that the provision in the Bill is more comprehensive. Their proposal was therefore not adopted.

80. NCIC further submitted that the Bill should retain the provision of the current Act of the single term of six years for Commissioners to align the act with Constitutional provisions on Commissions.

Committee’s Observation/Recommendation

The Committee observed that splitting the term of commissioners into a three-year term with a possibility of re-appointment for one further term offers a balanced approach that enhances accountability, flexibility, motivation, and public trust. The Proposal was therefore rejected.

Clause 17 on removal from office

81. NCIC submitted that the bill should adopt the provisions of the Constitution with regards to removal from office of the Chairperson or Commissioners.

Committee’s Observation/Recommendation

The Committee observed adopted this provision to align the Bill with Article 251 of the Constitution.

Clause 24 on the Secretary to the Commission

82. NCIC recommended that there be included qualifications for the person seeking to be Secretary to the Commission. The qualifications should include—

- (a) Holds a Masters from a university recognized in Kenya;
- (b) At least ten years proven experience at management level;
- (c) Has extensive experience in public administration and/or public service.

Committee's Observation/Recommendation

The Committee observed that changing the qualifications of a Secretary to the Commission from five years' experience to ten years' experience is not ideal. The relevance and quality of experience matter more than the number of years. The Proposal was therefore rejected.

Clause 47

83. The Commission submitted that the title of the offence of hate speech should be retained as per the current act.

Committee's Observation/Recommendation

The Committee adopted this proposal. To empower the commission to compel witnesses to comply with their summons.

84. NCIC also recommends the expansion of the definition of the offence of hate speech to include coded language, vilification of others etc. The proposed clause to read as follows—

A person who –

- (a) uses threatening, abusive, insulting, vilifying words or behaviour, displays any written material or disseminates any ideas based on ethnic superiority;
- (b) uses coded language, acts or makes gestures;
- (c) publishes, posts or distributes material in the print, electronic or social media;
- (d) presents or directs the public performance of a play with gestures depicting ethnic hatred;
- (e) distributes, shows or plays a recording of visual images or provides, produces or directs a programme which- (i) depicts ethnic propaganda or stereotyping; or (ii) contains gestures depicting ethnic hatred; or (iii) is threatening, abusive, insulting or vilifies others or involves the use of threatening, abusive, insulting or vilifying words or behaviour;
- (f) wears or engages in the display of clothing, signs, flags, emblems and insignia, with the intention to incite or stir up ethnic hatred or having regard to all the circumstances, ethnic hatred or social strife is likely to be stirred up, or social cohesion is likely to be disrupted, or show serious contempt for, or severe ridicule of, or incite acts of violence towards a person or group of persons, or towards any property of that person or group of persons, commits an offence.

Committee’s Observation/Recommendation

The Committee observed that the definition of hate speech is comprehensive and therefore adopted this proposal.

85. Further, NCIC recommended that the punishment in Clause 47(2) to be enhanced to a fine of not less than five million and to a term of imprisonment of not less than five years of both.

Committee’s Observation/Recommendation

The Committee observed that a fine should be proportionate to the offence. A one-million fine may be deemed sufficient to reflect the severity of the violation, whereas five million might be considered excessively punitive. The Committee rejected this proposal.

86. NCIC also recommended the inclusion of a new clause as follows—

“Any print, electronic, digital and social media, or other media enterprise that publishes or otherwise disseminates any of the acts under subsection (1) on any platform commits an offence and shall, on conviction, be liable to a fine of not less than ten million shillings or to imprisonment for a term of not less than ten years, or to both.” “any licenced media enterprise shall upon conviction have their licence revoked” “Any person convicted of an offence under this section shall not be eligible to hold any public nominative or elective office for a period of five years.”

Committee’s Observation/Recommendation

The Committee observed that a fine should be proportionate to the offense. A one-million fine may be deemed sufficient to reflect the severity of the violation, whereas five million might be considered excessively punitive. The Committee rejected this proposal.

87. Additionally, NCIC submitted that the Bill should retain the offence of ethnic or racial contempt as provided in the current NCI Act No. 7N to be added as Clause 48 to read as follows—

“Any person who utters words intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group or community on the basis of ethnicity or race, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or both. A newspaper, radio station or media enterprise that publishes the utterances referred to in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings.

Committee’s Observation/Recommendation

The Committee observed that a fine for this provision has been provided for under the provision on hate speech. The Committee did not adopt this provision.

Clause 60 on where conciliation fails

88. NCIC recommended the amendment of Clause 60(2) to provide for a procedure of hearing a matter where conciliation has failed. The clause would therefore read—

- (1)
- (2) The chairperson of the Commission may establish hearing panels each consisting of three members of the Commission to deal with, hear and determine the complaints admitted for hearing.
- (3) The panels established under subsection (2) shall exercise all the powers and shall perform all the duties and functions of the Commission in relation to any matter before the panel.
- (4) Members of a panel established under subsection (2) may, if necessary, consult with other members of the Commission for purposes of ensuring consistency of decisions of the Commission.

Committee’s Observation/Recommendation

The Committee adopted this provision since it provides the procedure of hearing a matter where conciliation has failed.

Clause 72 on offences

89. The Commission submitted that the penal provisions should be enhanced to a fine of one million shillings or to imprisonment for a term not exceeding three years.

Committee’s Observation/Recommendation

The Committee observed that a fine should be proportionate to the offense. A one-million fine may be deemed sufficient to reflect the severity of the violation, whereas five million might be considered excessively punitive. The Committee rejected this proposal.

Clause 84 on regulations

90. The NCIC submitted that the power to make regulations should be given to the Commission in consultation with the Cabinet Secretary.

Committee’s Observation/Recommendation

Committee observed that Commissions are often established to oversee specific areas or industries and are typically staffed with experts in those fields. These experts have a deep understanding of the complexities involved and can craft regulations that are technically sound, relevant, and effective in addressing specific challenges. The Committee adopted this proposal.

3.3.3 Office of the Attorney General (OAG)

91. The Office of the Attorney General made the following general comments on the Bill—

92. The OAG recommended that the Bill should provide clear and comprehensive definitions of key terms such as “national cohesion” and “integration” to avoid ambiguity and ensure consistent interpretation across different sectors and regions.

Committee’s Observation/Recommendation.

The Committee adopted this proposal.

93. Implementation mechanisms - it would be beneficial to elaborate on the practical implementation strategies and mechanisms that will be employed to achieve the goals outlined in the Bill. Clarity on roles, responsibilities and coordination among relevant government bodies and stakeholders essential for effective implementation.

Committee’s Observation/Recommendation

The Committee adopted this proposal.

94. Inclusivity and Participation; the Bill should emphasize inclusivity and active participation of all segments of society, including marginalized groups, in fostering national cohesion, provisions for public consultations and engagement during policy formulation and implementation stages would enhance ownership and effectiveness.

Committee’s Observation/Recommendation

The Committee adopted this proposal.

95. Monitoring and Evaluation: Incorporating provisions for regular monitoring and evaluation of the Bill’s impact and outcomes is vital. This will enable policymakers to assess progress, identify challenges and make necessary adjustments to policies and interventions.

Committee’s Observation/Recommendation

The Committee adopted this proposal.

96. Education and awareness: Strengthening initiatives related to education and public awareness campaigns on the importance of national cohesion and integration should be a key component of the Bill. Investing in educational programs that promote intercultural understanding and respect for diversity is essential for long-term success.

Committee’s Observation/Recommendation

The Committee adopted this proposal.

3.3.4 National Gender and Equality Commission (NGEC)

Clause 2

97. In their submissions, NGEC proposed the introduction of the following definitions—

- (a) **Discrimination** is the process of making unfair or prejudicial distinctions between people based on the groups, classes, or other categories to which they belong or are perceived to belong, such as race, gender, age, and religion;
- (b) **Affirmative action** is defined as a set of procedures designed to; eliminate unlawful discrimination among applicants, remedy the results of such prior discrimination, and prevent such discrimination in the future. The term affirmative action is proposed to replace what is termed “positive discrimination” or “exceptions to discrimination. Clause 42, 44 and 48.

Committee’s Observation/Recommendation

The Committee adopted the proposal on the definitions but rejected the proposal to replace what is termed as “positive discrimination” or “exceptions to discrimination” in clause 42, 44 and 48 because the provisions on the Bill relate to discrimination therefore using the terms “exceptions to discrimination” is clearer.

Clause 3

98. NGEC recommended that clause 3 (1)(a) be amended by substituting the subclause with the following—

(a) To provide a framework for the promotion of non-discrimination on ethnic grounds.

Committee’s Observation/Recommendation

Members observed that the provision in the Bill was more comprehensive. Their proposal was therefore not adopted.

Clause 5

99. . NGEC recommended that clause 5(1)(e) be amended by inserting the phrase “discrimination” immediately after the words “on ethnic grounds”. This is because the object of the Bill is to eliminate discrimination based on ethnic grounds and does not extend to all the grounds in Article 27(4).

Committee’s Observation/Recommendation

Members observed that the provision in the Bill was more comprehensive. Their proposal was therefore not adopted.

Clause 10

100. . NGEC proposed the rephrasing of clause 10 (2) to read as follows—

(2) The Commission shall establish offices as deemed necessary in the country.

Committee’s Observation/Recommendation

Members observed that the provision in the Bill was more comprehensive. Their proposal was therefore not adopted.

Clause 11

101. . NGEC recommended that clause 11 be amended by inserting a new subclause (11)(A) on the composition of the Commission by office.

Committee’s Observation/Recommendation

Members observed that the provision in the Bill was more comprehensive. Their proposal was therefore not adopted.

102. . NGEC further proposed that subclause 11(3) be amended by inserting the phrase “fair representation of disability” immediately after “equity” to comply with *Mwongozo Code of Governance* and Article 54 (2) of the Constitution.

Committee’s Observation/Recommendation

Members observed that the provision in the Bill was more comprehensive. Their proposal was therefore not adopted.

Clause 14

103. . NGEC proposed that clause 14(1) be amended by inserting after the phrase “Commission” the following-

“and in the absence of the Chairperson, the members present shall elect one of them in accordance with paragraph 4 of the Third schedule.

Committee’s Observation/Recommendation

Members observed that the provision in the Bill was more comprehensive. Their proposal was therefore not adopted.

Clause 16

104. . NGEC proposed the deletion of clause 16(h). It was its view that the provision was prejudicial and discriminatory to persons with physical and mental disability. The Convention on the Rights of Persons with Disabilities (CRPD) provides for reasonable accommodation to enable such person’s deliver on their mandate competitively with others.

Committee’s Observation/Recommendation

The Committee observed that the provision in the Bill was clearer. Their proposal was therefore not adopted.

Clause 25

105. . NGEC proposed the deletion of clause 25(1)(a) because it is prejudicial and discriminatory to persons with physical and mental disability. The Convention on the Rights of Persons with Disabilities (CRPD) provides for reasonable accommodation to enable such person’s deliver on their mandate competitively with others.

Committee’s Observation/Recommendation

The Committee observed that the provision in the Bill was clearer. Their proposal was therefore, not adopted

Clause 41

106. NGEC proposed the amendment of sub-clause (5) to align with section 87 of the Employment Act. NGEC opined that the sub-clause does not prescribe a penalty for the offence but section 87 provides for a general penalty which is a fine of fifty thousand or imprisonment not exceeding three months or both.

Committee's Observation/Recommendation

The Committee observed that the provision in the Bill was clearer. Their proposal was therefore not adopted.

Clause 42

107. NGEC proposed the amendment of the marginal note "Exceptions to discrimination in employment" by substituting it with "Affirmative action". Discrimination as defined above has a negative through and through and no exception or justification can sanitize it.

Committee's Observation/Recommendation

The Committee observed that the provision in the Bill was clearer. Their proposal was therefore not adopted.

Clause 43

108. NGEC recommended that clause 43(4) be amended by substituting the phrase "given religious persuasion or profession" with "a specific grouping". This is because "grouping" is a set of people that have something in common. Subclause (4) is too limiting i.e. on religious persuasion or profession. The law should not be seen as limiting and infringing on people's right to association especially if they have things in common.

Committee's Observation/Recommendation

The Committee observed rejected this proposal since these groups are limited by particular doctrines and the provision cannot apply to any group.

Clause 44

109. NGEC submitted that clause 44(2) be amended by substituting the phrase "a necessary requirement" with "an affirmative action"

Committee's Observation/Recommendation

The Committee observed that the provision in the Bill was clearer. Their proposal was, therefore, not adopted.

Clause 48

110. NGECE proposed that the marginal note "Exceptions to discrimination" be replaced with "Affirmative action"

Committee's Observation/Recommendation

The Committee observed that the provision in the Bill was clearer. Their proposal was therefore not adopted.

Clause 49

111. NGECE was of the view that the clause should be amended to specifically state the matters the proposed Commission can investigate i.e. jurisdiction in investigations (whether another Agency has the same or similar mandate) and the limitation of jurisdiction e.g. Criminal offences or matters already before a court. The rationale is to ensure that there is no overlap of mandates.

Committee's Observation/Recommendation

Members observed that their proposal will add value to the Bill and therefore adopted it.

National Police Service Commission (NPSC)

112. The Commission submitted that the letter and spirit of the Bill has largely captured the intent and purpose of the existence of the National Cohesion and Integration Commission. The Commission however made a few proposals to enhance the Bill.

Clause 14

113. The Commission proposed that clause 14(3) be amended to read as follows—

“ If the Office of the Chairperson and the Vice Chairperson become vacant or if the Chairperson and Vice Chairperson are unable to exercise the powers or perform the functions of their office owing to absence, illness or any other cause, the members shall elect one from amongst themselves, who shall exercise their powers or perform these functions.”

Committee's Observation/Recommendation

The Committee observed that the provision in the Bill was clearer. Their proposal was therefore not adopted.

Clause 15

114. NPSC submitted that the term of office for the Chairperson and members of the Commission be a non-renewable term of six (6) years.

Committee's Observation/Recommendation

The Committee observed that splitting the term of commissioners into a three-year term with a possibility of re-appointment for one further term offers a balanced approach that enhances accountability, flexibility, motivation, and public trust. The Proposal was therefore rejected.

Clause 18

115. NPSC proposed that Clause 18(2) of the Bill be amended to read as follows—

18(2). A person appointed under subclause (1) shall serve for a non-renewable term of six (6) years”.

Committee's Observation/Recommendation

The Committee observed that splitting the term of commissioners into a three-year term with a possibility of re-appointment for one further term offers a balanced approach that enhances accountability, flexibility, motivation, and public trust. The Proposal was therefore rejected.

Clause 23

116. The Commission proposed that the clause be amended to read as follows—

23. The Chairperson and members of the Commission shall be paid such remunerations and allowances, as shall be determined by the Salaries and Remuneration Commission (SRC)”

Committee's Observation/Recommendation

The Committee observed that commissioners are not constitutional commissioners and are thus public servants and Salaries Remuneration Commission only determines salary for state officers. The committee rejected this proposal.

Clause 32

117.NPSC proposed the addition of a new subclause 32(2)(f) to read as follows—

- (f) payment of the Commission rent expenses.

Committee’s Observation/Recommendation

The Committee observed that payment of the Commission rent expenses falls under maintenance of the buildings and grounds of the Commission. The Committee rejected this proposal.

Clause 52

118. The National Police Service Commission proposed the addition of a new subclause 52(2)(d) to read as follows—

- (c) a matter already before a Court of law.

Committee’s Observation/Recommendation

The Committee observed that the Bill has addressed the issue of a matter already before a Court of law therefore rejected this proposal.

Judicial Service Commission (JSC)

Clause 2

119. JSC proposed that the Bill should include the definition of “peace-building” in clause 2 of the Bill.

Committee’s Observation/Recommendation

The Members noted that the definition of peace building is already in the Bill. This proposal was rejected.

Clause 5

120. The Judiciary Service Commission supported the functions of the National Cohesion and Integration Commission as outlined in Clause 5 of the Bill.

Clause 16

121. The JSC proposed an amendment to Clause 16, by inserting the additional grounds for the declaration of a vacancy as proposed in Clause 16 (c), (i) and (j) of the Bill.

Committee's Observation/Recommendation

Members observed that the proposal by JSC is already addressed in the Bill.

Clause 42

122. The Judicial Service Commission proposed that the Bill in clause 42 (1), provide for an exemption of the special circumstances under which marginalized groups may be employed, in line with Article 56 (c) of the Constitution.

Committee's Observation/Recommendation

The Committee observed that Article 54 (c) provides that the state shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups are provided special opportunities for access to employment. This provision is sufficient in therefore the Committee rejected the proposal of incorporating the same in the Bill.

Office of The Director of Public Prosecutions (ODPP)

123. The ODPP supported the legislative reforms in the National Cohesion and Integration Bill, 2023 aimed at harmonizing the law with the existing realities in the digital era in the Bill with the following recommendations—

Clause 4

124. ODPP notes that the current law **Cap. 7N** provides in **section 16** that “Subject to the provisions of any other written law as to the meetings of the Commission, the Commission may hold its sittings at any place in Kenya”. The current Bill needs to specify where and how meetings may be held.

Committee's Observation/Recommendation

The Committee observed that the meetings of the Commission are elaborated in the **Third Schedule of the Bill**. The Committee rejected this proposal.

Clause 15

125. The ODPP proposed that under clause 15 of the Bill, the Chairperson and Members of the Commission should serve at least six (6) years non-renewable term and there should be a provision that they should not hold any other office or employment for profit.

Committee's Observation/Recommendation

The Committee observed that splitting the term of commissioners into a three-year term with a possibility of re-appointment for one further term offers a balanced approach that enhances accountability, flexibility, motivation, and public trust. The Proposal was therefore rejected.

Clause 17

126. ODPP raised concerns over clause 17(2) of the Bill. It noted that it is different from Article 251 (6) where upon receipt of the complaint from the National Assembly, the President appoints a tribunal. The tribunal shall investigate the matter expeditiously, report on the facts and make a binding recommendation to the President, who shall act in accordance with the recommendation within thirty days. If the bill is passed as it is therefore, it will have different provisions for removal of a commissioner and runs the risk of being declared unconstitutional.

Committee's Observation/Recommendation

The Committee adopted this provide a clear process for removal of a Commissioner.

Clause 47

127. ODPP recommended that religion and gender are very often the basis upon which discrimination occurs hence the same should be included in this clause and in the interpretation section otherwise this new law if passed, shall not be able to punish discrimination on grounds of gender and religion.

Committee's Observation/Recommendation

The Committee observed that gender and religion have been addressed in definition of ethnic group and ethnic grounds. Gender has also been addressed under clause 11(3) of the Bill where in appointing members to the Commission, the principles of gender equity, ethnic and regional representation shall apply. The Committee therefore did not adopt this proposal

Clause 49

128. ODPP noted that there is ambiguity in clause 49(1) with respect to who determines how serious a matter is. Is it the complainant, the commission, the suspect or the law? The law should provide the nature and seriousness of complaints that the commission should investigate. ODPP proposed that the law should state that complaints should be dismissed, where there is no

response for twelve months, and no reasons have been provided by the complainant, for the delay in providing a response.

Committee's Observation/Recommendation

The Committee observed that Clause 54 (1) of the Bill provides that the commission may dismiss a complaint where there is no response for twelve months. The Committee therefore did not adopt this proposal since it is provided for under clause 54(1) of this Bill.

129. ODPP proposes that the commission shall investigate and recommend to the Director of Public Prosecutions the prosecution of any complaints of ethnic contempt and any offences under this Act or any other law enacted pursuant to Article 10 and Article 27 of the Constitution.

Committee's Observation/Recommendation

The Members adopted this proposal.

Clause 63

130. ODPP proposes that there is a bit of ambiguity concerning this clause. What information would the commission be seeking from individuals? The commission should have power to investigate and gather evidence using the machinery it enjoys from the state. Information is a right protected in the Bill of Rights and it may not be possible to compel someone to give information. Even witnesses in court give evidence out of their own volition. They can decide not to give evidence, or submit erroneous information.

Committee's Observation/Recommendation

The Committee did not adopt this proposal as the provision in the Bill is clear.

131. ODPP recommended that this clause should not require individuals to furnish information but it should simply create an offence where individuals fail to comply with notices requiring them to cease acts or omissions causing discrimination.

Clause 64

132. Under clause 64 ODPP proposed that it is similar to a judicial review writ of prohibition normally issued by courts. That being the case, this will amount to the usurpation of judicial authority vested only in courts and tribunals under Article 159(1) of the Constitution.

Clause 65

133. ODPP proposed that clause 65 of the Bill be amended to read as follows—

“a contravention of this Act does not create any civil or criminal liability except to the extent expressly provided by this Act or any other written law”. This is because cooperation with the commission should not be criminalized to encourage people to give information without fear. Secondly, perjury and other offences relating to the administration of justice have already been dealt with in the Penal Code (Cap. 63). This section is problematic because judicial precedents and case law show that the high court has been very protective when it comes to fundamental freedoms and human rights especially the freedom of expression.

Committee’s Observation/Recommendation

The Committee observed that the proposed amendment by ODPP if adopted it could cause legal ambiguity. This clause could create confusion about the legal consequences of violating the Act. It suggests that only the specific penalties outlined in the Act (or other written laws) apply, but it does not clarify what happens if a particular type of violation isn’t explicitly covered. This could lead to uncertainty about whether certain actions are punishable or not. The Committee therefore did not adopt this proposal.

Clause 69

134. Under Clause 69 the ODPP recommended that to ensure effective control of prosecutorial functions and criminal investigations as per the mandate under Article 157, all criminal complaints should be forwarded to the DPP for review and further directions. It is for the ODPP to then determine and give directions. The Commission should not determine what to do with such complaints because to do that, would be tantamount to holding a criminal trial.

Committee’s Observation/Recommendation

The Members agreed to forwarding complaints to the DPP.

Clause 70

135. ODPP submitted that clause 70(3) should be deleted. State organs are responsible to the people through parliament and file their reports with the president and parliament. Making it a legal requirement to submit a report to the commission makes the commission have oversight roles which might run contrary to the constitution.

Committee's Observation/Recommendation

The Committee observed that the commission should carry out recommendations to the relevant agencies for action and the file its report to parliament. The relevant agency to which the report was filed will then be accountable to the parliament as to what they did with the report. The Committee adopted this provision.

Clause 72

136. ODPP noted that clause 72(d) is problematic because judicial precedents and case law show that the high court has been very protective when it comes to fundamental freedoms and human rights especially the freedom of expression. It is therefore ODPP's submission that section 72(d) should be deleted as it is contrary to the memorandum and objects of the Bill and right to freedom of expression.

Committee's Observation/Recommendation

The Committee rejected the proposal to delete this provision since laws protecting commissioners or public officials from insults are often justified by the need to maintain respect for those holding public office. The rationale is that public officials must be able to perform their duties without being subjected to disrespect or abuse, which could undermine their authority and the functioning of public institutions. The Committee rejected this proposal.

3.3 PUBLIC HEARINGS ON THE NATIONAL COHESION AND INTEGRATION BILL, 2023

137. In addition to receiving memoranda from the public and in order to facilitate comprehensive public participation, the Committee held meetings from Monday 3rd to Saturday 8th June, 2024 in various counties namely; in Kisumu, Kakamega, Lamu, Mombasa, Kwale, Garissa, Nyeri, Kirinyaga, Murang'a, Makueni, Nandi, Uasin Gishu and Homa bay. The meetings were held with people of diverse race, age, religion, culture, language and gender.

138. During the public hearings in the various counties, the members of the public either individually or representing institutions and organizations made presentations and/ or submitted memoranda which the Committee took into account while considering the Bill.

139. The feedback received from the interactions with stakeholders provided valuable input, highlighting specific concerns and suggestions for amendments. The following are the submissions on various clauses of the Bill—

Clause 2

140. Mr. Lawrence Ndugu from Mathira East Constituency supported the Bill and contributed that the definition of national cohesion should be incorporated in the Bill. The definition of equal distribution should also be incorporated into the Bill.

Committee’s Observation/Recommendation

The Committee observed that the Bill has provided for the formula on distribution of resources. The Bill states under Clause 45 that public resources shall as far as practicable be distributed equitably and geographically taking into account Kenya’s diversity, population and poverty index. The criteria on distribution of resources is more comprehensive than defining the term “equal distribution” therefore this proposal was not adopted.

141. Mr. Fredrick Kioko from Kitui County stated that there was a need to broaden the scope of the definition of hate speech.

Justification

The Committee observed that there ought to be a clearer definition of hate speech. The Committee agreed to the expansion of the definition of the offence of hate speech to include coded language, vilification of others e.t.c.

142. Ms. Julia Wanjiru from Kirinyaga County stated that she was in support of the Bill but there was a need for a standard form for collecting data and information on complaints of breach of national cohesion.

Committee’s Observation/Recommendation

The Committee observed that national cohesion breaches often involve complex issues such as ethnicity, politics, cultural sensitivities, or personal bias, which may vary widely from case to case. A standard form may not adequately capture the nuances and context of each

complaint. For example, a complaint about hate speech may involve complex cultural, historical, and social factors that a one-size-fits-all form may not fully reflect.

Clause 3

143. Mr. Franklin Mwangi from Nyeri County contributed that clause 3(a) of the Bill should give effect to Article 19 to Article 51 of the Constitution of Kenya instead of only giving effect to Articles 10 and 27.

Committee's Observation/Recommendation

The committee noted that Article 51 outlines the rights of individuals who are detained, held in custody, or imprisoned. Article 19 covers rights and fundamental freedoms. By including Articles 19 and 51 in the bill, the scope of the bill is broadened, and this may impact the bill's implementation.

144. Ms. Jane Chengo from Nyali, Mombasa County stated that this legislation is good as it will assist in solving the issue of discrimination in various sectors.

145. Ms. Caroline Cheptoo from Uasin Gishu County raised the issue of politics centred on tribalism where each region establishes its political party.

Committee's Observation/Recommendation

The committee noted that the issue of politics being centered on tribalism is a current concern in Kenya. The committee did not have any proposals on this issue since it does not relate to the bill.

146. Mr. Salim Bandari from Kongowea, Mombasa County opposed the Bill as it will mean further taxation on Kenyans to enable the commission to run its activities.

Committee's Observation/Recommendation

The committee has recognized the importance of establishing regional offices of the Commission in the country despite the associated costs, as this is vital for ensuring the effective delivery of services to Kenyans.

147. Mr. Basra Ahmed from Mukowe Constituency, Lamu County supported the Bill and contributed that as livestock keepers in Lamu, they experience unjust treatment contrary to the spirit of clause 3 (a).

148. Mr. Philip Kiptoo from Nandi County supported the Bill but inquired on why the act is establishing a new commission and why there is a need for the Secretary to the Commission to be a degree holder.

Committee's Observation/Recommendation

The Members observed that the NCIC Bill does not establish a new Commission. Upon commencement of this Act, any former member of the Commission shall be deemed to be a member of the reconstituted Commission.

Clause 5

149. Bishop Lius Muuka from Homabay County stated that the church needs to be elevated and included in the peace and integration process.

Committee's Observation/Recommendation

The Committee observed that under Article 8 of the Constitution of Kenya, there shall be no state religion and therefore the church may play a role but the same cannot be incorporated in the legislation on the peace and integration process. This proposal was rejected.

150. Mzee Shekhe Abdi from Nandi County supported the Bill and stated that according equal opportunities *mama mboga* and *boda boda* riders should be also appointed to leadership positions.

151. Mr. John Githunguri from Nandi County proposed that the Bill should include chiefs and peace committees to be involved in matters of national cohesion at the local levels.

152. Mr. Tobius Osano Nyakach Youth Representative stated that NCIC should incorporate the youth and the private sector to ensure unity

153. Mr. Rono Kibet from Uasin Gishu County proposed that existing Peace Committees be incorporated by strengthening the Sub-County Peace Committees and Nyumba Kumi currently under the Ministry of Interior in enhancing cohesion at the local levels.

Clause 5

154. Ms. Isabel Wambui contributed clause 5 should incorporate the function of the commission to conduct civil education to youth to avoid them participating in ethnic conflicts.

155. Mr. Joseph Nderitu, a chairperson of the Nyumba Kumi in Mwea supported the Bill and stated that there was need for equal opportunities in employment.

156. **Bishop Clement Otieno – Clergy from Homabay stated that** the Bill should consider the church as an important partner in bringing national cohesion to the country. The Bill should acknowledge the work of the churches through the National Churches Council of Kenya and recognize their local leadership in fostering peace at the local level.

Clause 7

157. Ms. Maurine Kemunto – Representative of Civil Society in Kakamega stated that the Commission should have investigative and prosecutorial powers to prosecute otherwise it is a toothless Commission and not having this done by other government agencies as proposed in the Bill.

Committee’s Observation/Recommendation

The Members agreed to giving the Commission prosecutorial powers

158. Mr. Nelson Owegi stated that the Commission should have prosecutorial powers.

Committee’s Observation/Recommendation

The Members agreed to giving the Commission prosecutorial powers.

159. Mr. Ben Mwaya stated that the Commission should have investigative and prosecutorial powers.

Committee’s Observation/Recommendation

The Members agreed to giving the Commission prosecutorial powers

160. Mr. Joshua Kiplagat proposed that NCIC should be given investigative and prosecutorial powers.

Committee’s Observation/Recommendation

The Members agreed to giving the Commission prosecutorial powers

Clause 10

161. Mr. Nelson Oduor proposed that the Headquarters of the Commission should be moved from Nairobi because Nairobi is overburdened.

Committee's Observation/Recommendation

The Members observed that Nairobi is the capital city and the primary hub for government operations, ministries, and diplomatic missions. Keeping the commission's headquarters in Nairobi ensures easy access to other government bodies, enabling efficient coordination and communication. The Committee did not adopt this proposal.

162. Mr. Issa Marti from Bombolulu stated that the establishment of the branches of the Commission will increase government expenditure.

Committee's Observation/Recommendation

The Committee observed that the establishment of the decentralized offices is a noble idea which ought to be effected progressively.

163. Mr. Philip Kasim from Ziwa la Ng'ombe constituency in Mombasa County stated that regional offices to be established and future branches in each county.

Committee's Observation/Recommendation

The Committee observed that the establishing of decentralized offices is a noble idea which ought to be implemented progressively

164. Reverend Karanja supported the Bill but proposed that under clause 10 (2) the nine regional offices be reduced to 8 regions. He further contributed that the following counties to be renamed; Embu, Turkana, Kisii and Taita to reflect names that are not similar to ethnic tribes.

Committee's Observation/Recommendation

The Committee observed that the establishing of the decentralized offices is a noble idea which ought to be effected progressively

165. Mr. Macharia Wambugu noted that the unequal opportunities to education due to poverty lead to unequal opportunities. He therefore proposed that the amount for bursaries be increased to enable education accessible to all regardless of economic status.

166. Ms. Irene Ngaruiya contributed that there needs to be formed a peace committee to be formed and have offices for purposes of carrying out peace functions.

167. Mr. James Mbori proposed that the regional offices should not only be to the nine regions but should be devolved further to the local level.

Committee's Observation/Recommendation

The Committee observed that the establishing of the decentralized offices is a noble idea which ought to be effected progressively

168. Wycliff Seve proposed that NCIC offices be decentralized to the grassroots and not just the nine regional offices for ease of access by ordinary citizens.

Committee's Observation/Recommendation

The Committee observed that the establishing of the decentralized offices is a noble idea which ought to be effected progressively.

169. Mr. John Njoroge from Kwale County stated that the establishment of 9 branches of the National Cohesion and Integration Commission and the establishment of the Commission's offices in each county will increase this will increase the government's expenditure and lead to further taxation.

Committee's Observation/Recommendation

The Committee observed that the establishing of the decentralized offices is a noble idea which ought to be effected progressively due to the cost implication.

Clause 11

170. Mr. Salim Shono proposed that the composition of the Commission should consider having a representative of the youth.

Clause 15

171. Mr. Opande Opara from Kisumu County stated that the term of office of the Commission is sensitive, the Commission to serve for a one-term period of six years to avoid politicizing their appointments.

Committee's Observation/Recommendation

The Committee observed that splitting the term of commissioners into a three-year term with a possibility of re-appointment for one further term offers a balanced approach that enhances accountability, flexibility, motivation, and public trust. The Proposal was therefore rejected.

172. Mr. Kepha Otieno from Kisumu County proposed that the Commissioners serve for one term of five years or their tenure be pegged on a performance contract.

Committee's Observation/Recommendation

The Committee observed that splitting the term of commissioners into a three-year term with a possibility of re-appointment for one further term offers a balanced approach that enhances accountability, flexibility, motivation, and public trust. The Proposal was therefore rejected.

173. Mr. Joseph Owalo from Kasipul constituency, Homabay County stated that NCIC Commissioners should serve for a three-year term as proposed by the Bill.

Committee's Observation/Recommendation

The Committee observed that splitting the term of commissioners into a three-year term with a possibility of re-appointment for one further term offers a balanced approach that enhances accountability, flexibility, motivation, and public trust. The Proposal was therefore rejected.

174. Mr. Erastus Kabaka a teacher from Kakamega County stated that NCIC Commissioners should serve for a six-year term as in the current law. This ensures experience and implementation of policy because three years is too short.

Committee's Observation/Recommendation

The Committee observed that splitting the term of commissioners into a three-year term with a possibility of re-appointment for one further term offers a balanced approach that enhances accountability, flexibility, motivation, and public trust. The Proposal was therefore rejected.

175. Ms. Marita Kipboeng proposed that NCIC Commissioners to serve for a three-year renewable term as proposed in the Bill.

Committee's Observation/Recommendation

The Committee observed that splitting the term of commissioners into a three-year term with a possibility of re-appointment for one further term offers a balanced approach that enhances accountability, flexibility, motivation, and public trust. The Proposal was therefore rejected.

Clause 32

176. Ms. Daisy Marawa from the administration sector in Nyeri stated that there is need for the Bill under clause 32 to fund counties in matters of cohesion and integration.

177. Macharia from the Nyumba Kumi for Mathira East Constituency contributed that they be established a National Cohesion Fund to enable people to go to college to study peace-building courses.

Clause 38

178. Mr. Nahashon Ochieng the representative of the Area Member of Parliament in Kisumu County stated that the Bill talks about discrimination and negative ethnicity but does not talk about nativity. At the county level, negativity is not a big challenge because the majority of the people are from largely the same ethnic community. However, the biggest challenge is the nativity where discrimination is based on things like clans, sub-clans and even villages. This aspect needs to be incorporated into the Bill to address the local challenges at the county and devolved unit levels.

179. Mr. Abdi Swaleh from Kwale County stated that eradicating ethnic discrimination should start at the national level.

Committee's Observation/Recommendation

The Committee observed that the National government can allocate resources to areas where poverty is most severe, ensuring that funds are used where they are most needed.

180. Mr. Joshua Opande from Kakamega County stated that ethnicity is not only negative, the positive attributes of ethnicity should also be outlined in the Bill. The Bill should define and incorporate the term “native” since it affects counties.

Committee's Observation/Recommendation

The Committee took note of the comments and noted the Bill has intensively addressed issues of ethnicity. Defining the word “native” would not enrich the Bill and therefore this proposal was not adopted.

181. Mr. Harrison Matawe contributed by stating that there is need to include discrimination on grounds of mental illness among the grounds for discrimination.

Committee’s Observation/Recommendation

The Committee acknowledged the feedback and recognized that addressing mental illness is crucial. However, incorporating mental illness into this Bill may be overshadowed by issues of ethnicity and national cohesion.

182. Mr. John Kaburu, a representative of the Persons with Disabilities stated that there is need for exemptions of PWD caregivers from paying taxes.

Committee’s Observation/Recommendation

The Committee did not adopt this proposal because it believes that it would be better for the government to provide a stipend to caregivers of persons with disabilities, rather than exempting them from paying taxes. This is because it would be difficult to enforce the exemption.

183. Mr. Maina Kasoi from Kirinyaga County was in support of the Bill on equal opportunities and recommended that male representatives should also be elected to represent counties instead of only having women representatives.

Committee’s Observation/Recommendation

The Committee took note of the comments but did not adopt this proposal because the Women Representative seat was part of broader affirmative action initiatives in the Constitution aimed at promoting women’s involvement in decision-making at all levels of government. It gave women a direct path to political leadership at the county level, complementing other efforts to increase women’s participation in political processes.

184. Ms. Halima Hanifa from Lamu County stated that despite the absence of tribalism in Lamu, residents face significant discrimination. Therefore, economic empowerment should be promoted without any form of discrimination.

Committee’s Observation/Recommendation

The Committee took note of the comments and noted that pursuant to clause 45 of the Bill, public resources shall as far as practicable, be distributed equitably and geographically

taking into account Kenya’s diversity, population and poverty index. This will help in promotion of economic empowerment without any form of discrimination.

185. Mr. Tonde Naaman stated that Ethnicity is not only negative, the positive attributes of ethnicity should also be outlined in the Bill.

186. Mr. Moses Sulu supported the Bill but stated that there is discrimination in ethnicity.

187. Mr. Joseph Owalo stated that the Bill talks about discrimination and negative ethnicity which does not affect the local people at the local level. The main is the issue of nativity which the Bill should address especially at the county level.

188. Ms. Mary Atieno Omolo from Homabay County stated that the Bill should address discrimination based on bribery especially those who bribe for employment.

Clause 41

189. Mzee Wafula Wanyama from Kakamega County proposed to have public entities not to employ more than one-fifth from the same ethnic community to be maintained as proposed in the Bill but the new opportunities to be given to the disadvantaged communities to ensure equal opportunities and balance.

190. Mr. Julius Munyoki Muthui from Mwingi Constituency, Kitui County supported the Bill and recommended that a public entity shall not recruit or have its employment more than ten per cent (10%) of its staff from the same ethnic community.

Committee’s Observation/Recommendation

The Committee has taken note that the Bill proposes a limitation on public entities, stipulating that no more than one-fifth of their staff can be from the same ethnic community. Comparing this to the current provision of 30%, it is evident that the proposed 20% limit represents a more progressive approach than a 10% restriction.

191. Mr. Clement Wachira from Bombolulu, Mombasa County inquired into the issue of recruitment in the public service and how the Bill will solve the issue of corruption and equal opportunity for all.

192. Mwanahamisi from Kwale County inquired about how ethnic discrimination will be handled especially in job opportunities.

Committee’s Observation/Recommendation

The Committee observed that clause 42 makes provision for discrimination in employment. Therefore, the same has already been addressed in the Bill.

193. Ms. Esther Nanjala proposed not to have public entities not to employ more than one-fifth from the same ethnic community to be maintained as proposed in the Bill.

Committee’s Observation/Recommendation

The Committee adopted this proposal in support of the current provision in the Bill.

194. Ms. Fatuma Ahmed from Mombasa County supported the Bill but stated that employment opportunities are available but are not given to the youth.

195. Mr. Edmund Wanyoike supported the Bill and stated that the Bill needs to ensure that under clause 41(2) a public entity should not recruit or have in its employment more than one-fifth of its staff from the same ethnic community.

Committee’s Observation/Recommendation

The Committee has taken note that the Bill proposes a limitation on public entities, stipulating that no more than one-fifth of their staff can be from the same ethnic community. The proposal was therefore in support of the current Bill provision.

196. Ms. Adelite Muhandi from Kakamega County proposed that the employment ratio by the public entities not to employ more than one-fifth from one ethnic community is supported and the same should be enforced to ensure its implementation.

197. Mr. Hamisi from Lamu supported the Bill but stated that the companies in Lamu should prioritize providing employment opportunities to the local youth.

Committee’s Observation/Recommendation

The Committee observed that clause 41 makes provision for discrimination in employment. Therefore, the same has already been addressed in the Bill where a public entity shall not recruit or have in its employment more than one fifth of its staff from the same ethnic community.

198. Mr. Boaz Ikenda, a Human Rights Defender from Kakamega County proposed that the employment ratio by the public entities be reduced to 15% so that no public entity should be allowed to employ 15% from one ethnic community.

Committee's Observation/Recommendation

The Committee has taken note that the Bill proposes a limitation on public entities, stipulating that no more than one-fifth of their staff can be from the same ethnic community. Comparing this to the current provision of 30%, it is evident that the proposed 20% limit represents a more progressive approach than a 15% restriction.

Clause 42

199. Mr. James Mbori proposed a mechanism to remedy the over-employment of certain communities by the public entities at the disadvantage of other communities.

Committee's Observation/Recommendation

The Committee observed that clause 41 makes provision for discrimination in employment. Therefore, the same has already been addressed in the Bill where a public entity shall not recruit or have in its employment more than one fifth of its staff from the same ethnic community.

200. Mr. Nahashon Matubia from Kwale County recommended that clause 42 on exemptions to discrimination in employment be enhanced for clarity purposes.

Committee's Observation/Recommendation

The Committee took note of the comments and adopt this proposal.

201. Mr. Reagan Ochieng from Nyali, Mombasa County inquired on what the Bill seeks to achieve. He inquired on the issue of discrimination in employment under clause 42.

Committee's Observation/Recommendation

The Committee observed that clause 42 makes provision for discrimination in employment. Therefore, the same has already been addressed in the Bill .

202. Mutua Kilomi from Kitui County stated that the Bill should drive affirmative action by prioritising marginalised communities during employment.

Committee's Observation/Recommendation

The Committee observed that clause 41 makes provision for discrimination in employment. Therefore, the same has already been addressed in the Bill where a public entity shall not recruit or have in its employment more than one fifth of its staff from the same ethnic community.

203. Ms. Basra Ahmed from Mukowe Constituency in Lamu County supported the Bill and noted that there is lack of employment opportunities for the youths.

Committee's Observation/Recommendation

The Committee observed that clause 41 makes provision for discrimination in employment. Therefore, the same has already been addressed in the Bill.

204. Ms. Halima Mohammed from Lamu County stated that there is job discrimination in Lamu based on the IDs particularly affecting individuals who have relocated from Isiolo.

Clause 45

205. Mr. Nelson Wanyoro from Nyeri County supported the Bill and contributed that pursuant to clause 45 of the Bill, the resources should be distributed as per the national cake.

206. Ms. Basra Ahmed from Mukowe Constituency in Lamu County supported the Bill and noted that there is discrimination against Lamu residents based on the geographic information on their Identification Cards (IDs)

207. Ms. Margaret Nyambura from Lamu County stated that inadequate water resources to support the well-being and development of affected communities. There is also discrimination against the Somali residents in Lamu.

208. Mumo Charles a youth leader at Kamuwongo in Kitui county stated that equal chances need to be accorded in employment and there should not be geographical discrimination.

Committee's Observation/Recommendation

The Committee observed that clause 41 makes provision for discrimination in employment. Therefore, the same has already been addressed in the Bill where a public entity shall not recruit or have in its employment more than one fifth of its staff from the same ethnic community.

209. Mr. Ismael Noor from Lamu County supported the Bill but raised concerns about inadequate water resources in Lamu County.

Committee's Observation/Recommendation

The Committee took note of the comments and noted that pursuant to clause 45 of the Bill, public resources shall as far as practicable, be distributed equitably and geographically taking into account Kenya's diversity, population and poverty index. This will help in promotion of economic empowerment without any form of discrimination.

210. Mary Wambugu supported the Bill and stated that there is need for affirmative action to end discrimination on grounds of geographical area.

Committee's Observation/Recommendation

The Committee took note of the comments and noted that pursuant to clause 45 of the Bill, public resources shall as far as practicable, be distributed equitably and geographically taking into account Kenya's diversity, population and poverty index. This will help in promotion of economic empowerment without any form of discrimination.

211. Mzee Mutua Kioko from Mwingi constituency, Kitui County advocated for the Bill to ensure equal sharing of resources.

Committee's Observation/Recommendation

The Committee took note of the comments and noted that pursuant to clause 45 of the Bill, public resources shall as far as practicable, be distributed equitably and geographically taking into account Kenya's diversity, population and poverty index. This will help in promotion of economic empowerment without any form of discrimination.

212. Ms. Jennifer Kimanzi a PWD from Kitui County stated that resources should be distributed as per the size of the constituency and not the population.

Committee’s Observation/Recommendation

The Committee took note of the comments and noted that pursuant to clause 45 of the Bill, public resources shall as far as practicable, be distributed equitably and geographically taking into account Kenya’s diversity, population and poverty index. This will help in promotion of economic empowerment without any form of discrimination.

213. Mzee Shekhe Balshir from the Association of Imams and Preachers of Kenya in Nyeri County stated that there is a challenge in achieving national unity due to discrimination on grounds of religion, ethnic or social origin and language. He stated that there are no equal opportunities for education.

214. Ms. Amina Mohamed from Lamu County stated that the people of Lamu suffer from widespread poverty and neglect and there is need of accord of equal opportunities.

Committee’s Observation/Recommendation

The Committee took note of the comments and noted that pursuant to clause 45 of the Bill, public resources shall as far as practicable, be distributed equitably and geographically taking into account Kenya’s diversity, population and poverty index. This will help in promotion of economic empowerment without any form of discrimination.

215. Wairimu from Kamwenju Teachers College stated that there is need for equal distribution of resources.

Clause 47

216. Mr. Mama Waithira stated that Clause 47 on ethnic or racial contempt should be amended the marginal note to reflect “hate speech”. The Clause needs to incorporate the control of social media online hate speech.

Committee’s Observation/Recommendation

The Committee adopted this proposal.

217. Mr. Charles Kamau from Mwea Tebere ward stated that he was in support of the Bill but there is need for the establishment of a committee to regulate politicians’ hate speech.

Committee's Observation/Recommendation

The Committee observed that this proposal has already been catered for under hate speech. The Commission shall handle complaints on hate speech .

218. Mr. Abdi from Kwale County clarified the rationale for removing the NCI Act, of 2008. He also raised concerns about the prevalence of hostility, hate speech and incitement which threaten social cohesion.

Committee's Observation/Recommendation

The Committee adopted this proposal.

219. Mr. John Ihandi stated that the Bill is silent on hate speech and ought to be incorporated. Currently, NCIC is very discriminative in addressing hate speech remarks by elected leaders and the provision on hate speech should address that.

Committee's Observation/Recommendation

The Committee adopted this proposal and widened the scope of hate speech to include coded language, vilification of others e.t.c.

Clause 49-84 on Complaints, Investigations and Enforcement

220. Mzee Mwangi stated that in Clause 50-51 on complaints, the Bill to consider incorporating reporting to the village elders and local area chief.

221. Mr. Samuel Karanja from Kwale County supported the Bill as it will assist the mwananchi. He stated that it's good the commission has the power to handle complaints as opposed to reporting the issues to the Police.

222. Ms. Dorris Fundi from Kwale County inquired about where to file cases on nepotism. She was directed to lodge the same as a complaint under clause 51

223. Mr. Wilson Kinyua from Mwea Constituency stated that there was need to have the complaints offices at the constituency levels.

Committee's Observation/Recommendation

The Committee emphasized the importance of gradually establishing the Commission's regional offices to manage costs effectively. This phased approach will ensure that resources are allocated efficiently until the offices can be fully operational at the constituency level.

The Committee acknowledged the feedback and recognized that addressing mental illness is crucial. However, incorporating mental illness into this Bill may be overshadowed by issues of ethnicity and national cohesion.

224. Mr. Issa Marti from Bongolulu proposed that complaints relating to offences in the Act should be reported to the Police.

225. Mr. Salaysa Tom from Kitui County stated that the NCIC should be given powers to take action against the perpetrators of violence and tribal conflicts.

Committee's Observation/Recommendation

The Committee adopted this proposal.

PART FOUR

4.0 SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered by the House during the Committee Stage:

CHAPTER FOUR

SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered by the House during the Committee Stage:

CLAUSE 2

THAT clause 2 of the Bill be amended by inserting the following new definitions in proper alphabetical sequence—

“discrimination” means the process of making unfair or prejudicial distinctions between people based on the groups, classes, or other categories to which they belong or are perceived to belong, such as race, gender, age, and religion;

“affirmative action” means a set of procedures designed to; eliminate unlawful discrimination among applicants, remedy the results of such prior discrimination, and prevent such discrimination in the future.

CLAUSE 5

THAT clause 5 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (j) —

(k) oversee the implementation of peace building projects by—

- (i) developing a monitoring and tracking mechanism for all peace building projects in the country;
- (ii) developing ethical standards to be adhered to by persons involved in peace building projects;
- (iii) undertaking research and analysing and disseminating information critical gaps and strategic priorities relevant to peace building in any particular region;
- (iv) systematically collecting information on lessons learnt in peace building;
- (v) advising persons involved in peace building projects on best practices for achieving lasting cohesion and integration in any particular area;
- (vi) advising the national and county governments on the most appropriate peace building interventions based on the existing circumstances of the local communities;
- (vii) encouraging national and county governments to allocate funding for peace-building initiatives;
- (viii) taking measures to ensure that there is harmony in peace-building projects undertaken in any particular area;
- (ix) taking measures to ensure that persons involved in peace-building projects in the counties do not instigate, perpetuate or deepen instability or strife in any area;
- (l) set standards to be adhered to by persons involved in the implementation of peace-building projects;
- (m) investigate complaints of ethnic or racial discrimination and make recommendations to the Attorney-General, the Kenya National Commission on Human Rights Commission or any other relevant authority on the remedial measures to be taken where such complaints are valid; and
- (n) investigate on its own accord or on request from any institution, office, or person any issue affecting ethnic and racial relations;

THAT the Bill be amended by inserting the following new clause immediately after clause 6—

6A. (1) The Commission shall maintain a register of all peace-building projects within Kenya. Register of peace

(2) A person who intends to engage in a peace-building project in Kenya shall notify the Commission of the project and give the following details about the project— building projects.

- (a) a description of the peace-building project or activity that the applicant intends to undertake;
- (b) a statement of the place where the peace building project is to be carried out and the targeted community;
- (c) a schedule of activities proposed to be undertaken under the peace building project;
- (d) the time-frame of the peace building project;
- (e) the source of financing for the project;
- (f) a statement as to whether there is any conflict of interest;
- (g) a statement as to whether the applicant has carried out any other peace building project within the targeted community and the outcome of that peace building project;
- (h) the names of the officers in charge of the peace building project; and
- (i) any other information that the Commission may require.

CLAUSE 8

THAT Clause 8 of the Bill be amended—

- (a) by renumbering the existing provision as paragraph (a)
- (b) by inserting the following new paragraph immediately after the proposed new paragraph (a)—

(b) Power to compel the attendance of witnesses to the commission

A person who fails to obey summons for the attendance as a witness or other persons or for the production of books, plans and other documents or who, having complied, refuses or fails to give his or her correct name and address and to answer truthfully all questions that may be lawfully put to him or her commits an offence and shall be liable on

conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both.

Justification

To empower the commission to compel witnesses to comply with their summons.

CLAUSE 14

THAT clause 14 of the Bill be amended in subclause (3) by inserting the word “temporarily” immediately after the words “who shall”.

CLAUSE 17

THAT the Bill be amended by deleting and clause 17 of the Bill be amended Removal from
by deleting and substituting therefor the following new clause— office.

17. (1) A member of the commission, other than an *ex officio* member, may be removed from office only for—

(a) serious violation of the Constitution or any other law, including a contravention of Chapter Six;

(b) gross misconduct, whether in the performance of the member’s or functions or otherwise;

(c) physical or mental incapacity to perform the functions of office;

(d) incompetence; or

(e) bankruptcy.

(2) A person desiring the removal of a member of a commission on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.

(3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the President.

(4) On receiving a petition under subsection (3), the President—

(a) may suspend the member or office holder pending the outcome of the complaint; and

(b) shall appoint a tribunal in accordance with clause (5).

- (5) The tribunal shall consist of—
- (a) a person who holds or has held office as a judge of a superior court, who shall be the chairperson;
 - (b) at least two persons who are qualified to be appointed as High Court judges; and
 - (c) one other member who is qualified to assess the facts in respect of the particular ground for removal.
- (6) The tribunal shall investigate the matter expeditiously, report on the facts and make a binding recommendation to the President, who shall act in accordance with the recommendation within thirty days.
- (7) A person suspended under this Article is entitled to continue to receive one half of the remuneration and benefits of the office while suspended.

Justification

To provide a clear process of removal of a Commissioner.

3. CLAUSE 47

THAT clause 47 of the Bill be amended—

- (a) by deleting the marginal notes and substituting the following new marginal note—
“hate speech”;
- (b) by deleting sub-clause (1) and substituting therefor the following new subclause—
 - 1. A person who—
 - (a) uses threatening, abusive, insulting, vilifying words or behaviour, displays any written material or disseminates any ideas based on ethnic superiority;
 - (b) uses coded language, acts or makes gestures;
 - (c) publishes, posts or distributes material in the print, electronic or social media;

- (d) presents or directs the public performance of a play with gestures depicting ethnic hatred;
- (e) distributes, shows or plays a recording of visual images or provides, produces or directs a programme which—
 - (i) depicts ethnic propaganda or stereotyping; or
 - (ii) contains gestures depicting ethnic hatred; or
 - (iii) is threatening, abusive, insulting or vilifies others or involves the use of threatening, abusive, insulting or vilifying words or behaviour;
- (f) wears or engages in the display of clothing, signs, flags, emblems and insignia, with the intention to incite or stir up ethnic hatred or having regard to all the circumstances, ethnic hatred or social strife is likely to be stirred up, or social cohesion is likely to be disrupted, or show serious contempt for, or severe ridicule of, or incite acts of violence towards a person or group of persons, or towards any property of that person or group of persons, commits an offence.

Justification

For the expansion of the definition of the offence of hate speech to include coded language, vilification of others e.t.c.

CLAUSE 60

4. **THAT** Clause 60 of the Bill be amended by inserting the following new subclauses immediately after subclause (1);
 - (3) The chairperson of the Commission may establish hearing panels each consisting of three members of the Commission to deal with, hear and determine the complaints admitted for hearing.
 - (4) The panels established under subsection (2) shall exercise all the powers and shall perform all the duties and functions of the Commission in relation to any matter before the panel.

(5) Members of a panel established under subsection (2) may, if necessary, consult with other members of the Commission for purposes of ensuring consistency of decisions of the Commission.

CLAUSE 70

THAT Clause 70 of the Bill be amended by deleting subclause (3).

Justification

The commission should carry out recommendations to the relevant agencies for action and then file its report to parliament. The relevant agency to which the report was filed will then be accountable to the parliament as to what they did with the report. The Committee adopted this provision.

CLAUSE 84

THAT clause 84 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefore the following new subclause—

The Commission may in consultation with the Cabinet Secretary make regulations for the effective implementation of this Act.

(b) in subclause (2) by deleting the words “Cabinet Secretary” appearing before the word “shall” and substituting therefor the word “Commission”

Justification

To vest powers of making regulation on the Commission.

PART VIII-TRANSITIONAL PROVISIONS

THAT clause 85 of the Bill be amended by deleting the marginal note and substituting the following new marginal note “Repeal of Cap. 7N”.

Justification

To align with the Revision of the Laws Order, 2023 on revision of laws.

PART FIVE

5.0 COMMITTEE OBSERVATIONS

226. Upon reviewing the Bill and the submissions received, the Committee made the following observations—

- (a) The Bill seeks to repeal and replace the National Cohesion and Integration Act, 2008 to align with the current constitutional dispensation and structure of government by giving effect to Articles 10 and 27 of the Constitution;
- (b) Extensive public participation was conducted including public hearings in various counties and invitations for written submissions from stakeholders and the public, reflecting compliance with Article 118 (1) (b) of the Constitution and Standing Order 127;
- (c) The Bill provides a framework on the objectives and functions of the NCIC, establishment of the Commission, ethnic discrimination, victimization, harassment, discrimination in employment, hate speech and other areas related to national cohesion and integration;
- (d) There was significant debate regarding the appropriate term of office for the Chairperson and members of the Commission, with proposals varying between a three-year term and a six-year term;

Committee's Observation/Recommendation

The Committee observed that splitting the term of commissioners into a three-year term with a possibility of re-appointment for one further term offers a balanced approach that enhances accountability, flexibility, motivation, and public trust. The Proposal was therefore rejected.

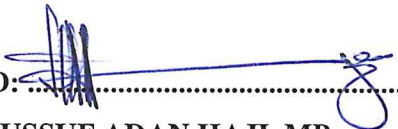
- (e) The Bill's provisions on promoting ethnic diversity in public employment received broad support. However, some stakeholders recommended implementing stricter limits on the percentage of employees that can be hired from a single ethnic community to enhance inclusivity and representation; and
- (f) The passage of the Bill is a crucial step towards promoting national unity, non-discrimination and peace building in Kenya. However, there is need for clear

implementation mechanisms, monitoring and evaluation strategies and public awareness initiatives at the lowest level to ensure its success.


PART FIVE

6.0 COMMITTEE RECOMMENDATIONS

227. The Committee, having considered the National Cohesion and Integration Bill (*National Assembly Bill 74 of 2023*) recommends that the House approves the Bill with amendments as proposed in Part four of this report.

SIGNED:  DATE: 19/09/2024

HON. YUSSUF ADAN HAJI, MP
CHAIRPERSON
COMMITTEE ON NATIONAL COHESION AND EQUAL OPPORTUNITY

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 19 SEP 2024	
DAY: THURSDAY	
TABLED BY:	HON. YUSSUF HAJI, MP CHAIRPERSON, COMMITTEE ON NATIONAL COHESION & EQUAL OPPORTUNITY
CLERK-AT THE-TABLE:	VIYIAN WAMBUI

