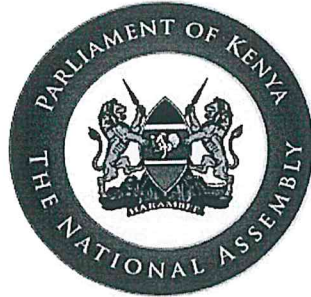


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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION - 2025

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL
SECURITY

REPORT ON: -

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

SPONSORED BY
HON. GEOFFREY KIRINGA RUKU, MP

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 THE NATIONAL ASSEMBLY PAPERS LAID	
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TABLED BY:	VICE-CHAIRPERSON, DEPTAL COMMITTEE ON ADMINISTRATION & INTERNAL SECURITY
CLERK-AT THE-TABLE:	J. Lemerche

TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD	2
PART I	3
1.0 PREFACE.....	3
PART II.....	6
2.0 THE ASSEMBLY AND DEMONSTRATION BILL, 2024	6
PART III	11
3.0 CONSIDERATION OF THE ASSEMBLY AND DEMONSTRATION BILL, 2024 BY THE COMMITTEE.....	11
PART IV	45
4.0 COMMITTEE OBSERVATIONS	45
PART V	46
5.0 COMMITTEE RECOMMENDATIONS.....	46

CHAIRPERSON'S FOREWORD

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

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

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

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

Acknowledgement

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

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

HON. GABRIEL TONGOYO, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & INTERNAL SECURITY

PART I

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Administration and Internal Security is constituted pursuant to the National Assembly Standing Order 216(1) which mandates Departmental Committees to–
 - a. *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - b. *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
 - (ba) *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - c. *study and review all legislation referred to it;*
 - d. *study, assess and analyze the relative success of the Ministries and departments by the results obtained as compared with their stated objectives;*
 - e. *investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - f. *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - (fa) *examine treaties, agreements and conventions;*
 - g. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - h. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - i. *examine any questions raised by Members on a matter within its mandate.*

1.2 Subjects of the Committee

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

1.3 Committee Membership

3. The Committee comprises of the following Members: -

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

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

Hon. Kaluma Peter, CBS, MP
Homa Bay Constituency

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

Hon. Aduma Owuor, MP
Nyakach Constituency

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

Hon. Fred C. Kapondi, MP
Elgon Constituency

Hon. Rozaah Akinyi Buyu, MP
Kisumu West Constituency

Hon. Liza Chepkorir Chelule, MP
Nakuru County

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

Hon. Sarah Paulata Korere, MP
Laikipia North Constituency

Hon. Francis Sigei, EBS, MP
Sotik Constituency

Hon. Oku Kaunya, MP
Teso North Constituency

Hon. Hussein Weytan, MP
Mandera East Constituency,

Hon. Mburu Kahangara, MP
Lari Constituency

1.4 Committee Secretariat

4. The Committee Secretariat consists of the following:

Mr. John Mugoma
Head of Secretariat

Ms. Grace Wahu
Clerk Assistant II

Mr. Gideon Kipkogei
Clerk Assistant II

Mr. Edison Odhiambo
Fiscal Analyst I

Ms. Clarah Kimeli
Principal Legal Counsel II

Ms. Delvin Onyancha
Research Officer II

Mr. Benson Kimanzi
Serjeant at Arms

Ms. Judith Kanyoko
Legal Counsel II

Ms. Ivy Maritim
Media Relations Officer III

Mr. Rodgers Kilungya
Audio Officer

PART II

2.0 THE ASSEMBLY AND DEMONSTRATION BILL, 2024

2.1 Analysis of the Bill

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART III

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

3.1 The Legal Provision on Public Participation

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

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

31. Standing Order 127(3) provides that—

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

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

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

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

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

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

3.2 Submissions on the Bill

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

- a. the National Police Service Commission (NPSC)

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

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

3.3 GENERAL SUBMISSIONS

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

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

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

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

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

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

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

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

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

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

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

restrictions that could be used to limit the right to assemble and transforms the right into a privilege and that it lacks clarity in defining what constitutes peaceful demonstration and picketing. He noted that there was potential for misuse by law enforcement authorities, violation of International Human Rights Standards which Kenya is signatory to and that the Bill had a chilling effect on public participation and civic engagement.

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

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

54. He thus proposed alternative solutions other than imposing restrictive laws and noted that public order can be maintained through existing laws and effective policing other than restrictive legislation. He submitted that blaming protests for isolated acts of violence unfairly punishes all demonstrations and that national security should not be used as blanket justification to curtail civil rights. He noted that the benefits of citizens freely expressing themselves freely outweighs short term economic costs and that isolated cases of misuse of demonstrations should not be used justify sweeping laws.

55. **Kericho Civil Society Network and Tunaweza Members** submitted that the bill ought to clarify that notification, not permission need be sufficient in line with international standards. He proposed that an individual should be held accountable for their actions during demonstrations, without overburdening organizers and that the Bill should offer more flexible guidelines considering both public interest and security concerns. They submitted that the Bill places significant responsibility on organizers. In their view, the role of enforcement in maintaining order during assemblies should also be emphasized and that blanket restriction on locations, especially around areas of significant public interest, could limit the impact of demonstrations.

56. **Kimaru Thagana** proposed the rejection of the entire Bill on the grounds that the limitation of the right under clause 6 is in contravention of Article 37 of the Constitution. He submitted that the requirement for provision of addresses by convenors poses a threat to privacy as well as the risk of being targeted, while a refusal for a notice to hold an assembly due to a different group holding demonstrations in the same place and time may lead to bias against anti-government protestors. He submitted further that Clause 11(a) is vague and opens room for interpretation and harassment as it does not give a threshold for what qualifies as “incitement of hatred”, and that liability for damage of property to the organizer creates an atmosphere of fear.

Committee Observations

57. The Committee observed that—

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

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

A. CLAUSE 2 - INTERPRETATION

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

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

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

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

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

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

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

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

Committee Observations

80. The Committee observed that—

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

B. CLAUSE 3 - OBJECTS AND PURPOSE OF THE ACT

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

Committee Observation

84. The Committee observed that—

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

C. CLAUSE 4 - APPLICATION

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

Committee Observations

87. The Committee observed that—

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

D. CLAUSE 5 - COMMON LAW OF TRESSPASS

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

Committee observation

90. The Committee observed that—

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

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

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

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

Committee Observations

100. The Committee Observed that—

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

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

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

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

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

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

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

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

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

125. They also proposed amendment of Clause 7(5) to require the notice be sent via email to the organizer to safeguard the rights of the organizer and security. They proposed deletion of Clause 7(7) noting that it is a dereliction of public duty for the police to transfer their constitutional duties and functions to maintain peace and order at assemblies to organizers or any other private citizens and that the imposition of this duty to maintain peace and order on private citizens is unlawful. They proposed amendment of Clause 7(10) by deleting the penalty under Chapter XI of the Penal Code and substituting it with a green justice penalty like community work, noting that no peaceful assembly or demonstration is *prima facie* unlawful but regulated.

126. **Kenya Civil Society Organisations** proposed amendment of Clause 7(3)(a) and (b) be to exclude the organizers from providing personal details such as their residential addresses which they submitted is a breach to one's right to privacy. They proposed deletion of Clause 7(10) for the reason that the imposition of criminal liability on protestors contrary to Article 37 of the Constitution. They noted that there is extensive discretion given to the law enforcers to allow or deny demonstration, the penalty set is contrary to Article 24(1)(e) and that the Bill instigates intrinsic censures to Kenyans as many Kenyans will fear facing the penalties.

127. **WeCare Community-Based Organization** proposed that Clause 7(2) be amended to accommodate the practical need of protest organizers noting that the requirement to notify the regulating officer between three and fourteen days may constrain the ability of the individuals and groups to respond to urgent issues. They further proposed alternative methods for verifying organizer identity without compromising privacy could be considered noting that requiring the full names and physical addresses of the organizers and marshals may raise privacy concerns and create barriers for individuals who wish to organize protests but are concerned about their safety or privacy. They also proposed flexibility in updating or modifying the site or route within certain parameters while still maintaining communications with authorities. They submitted that the requirement to specify the exact site, while aimed at ensuring public safety and order, may place a significant burden on organizers. They proposed that the notification should be streamlined to ensure that it is not used as a tool to suppress or unduly control peaceful assembly noting that the level of detail required in the notification process should be balanced against the need to protect the rights of individuals to assemble and demonstrate.

128. The **National Police Service Commission** proposed that the Bill should make provision criteria for restricting assembly and demonstration which must be specific, clear and lawful. They proposed amendment of clause 7(2) to reduce the notice period to 2 days noting that a short notification period allows for quicker responses to events balancing spontaneity with

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

129. The Commission proposed amending clause 7(9) to provide for personal liability in cases where loss and damage to property arise from acts of violence and vandalism during demonstrations and assembly, to ensure accountability by persons involved in demonstrations and assembly while protecting the rights of peaceful participants. They also proposed amendment of Clause 7(10) to reduce imprisonment to a maximum period of one month and prioritize fines noting that a shorter sentence period avoids over penalizing minor infractions rather than criminalizing infractions.

130. **Tribeless Youth** proposed the deletion of clause 7(1) and (2) which they submitted grants much regulatory control to the regulating officer which can potentially be misused to limit and suppress assemblies. They further proposed deletion of Clause 7(3) which they noted raises major data privacy concerns for the persons involved under data protection Act. They noted that the requirement for regulating officer to notify organizer in writing at physical address under Clause 7(4) and (5) poses security risks and that the need to reschedule under Clause 7(8) may result in loss of momentum or relevance. They noted further that the provision of Public registers under Clause 7(13) could include sensitive details about organizers exposes them to harassment.

Committee Observations

131. The Committee observed that—

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

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

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

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

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

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

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

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

Committee Observations

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

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

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

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

Committee Observations

152. The Committee observed that—

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

I. CLAUSE 10 - CONDUCT OF ASSEMBLY OR DEMONSTRATION

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

Committee Observations

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

J. CLAUSE 11 - PROHIBITIONS DURING AN ASSEMBLY OR DEMONSTRATION

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

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

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

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

Committee Observations

172. The Committee observed that—

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

K. CLAUSE 12- LIABILITY FOR DAMAGE

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

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

Committee Observations

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

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

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

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

195. **ARTICLE 19 Eastern Africa** proposed an amendment to add an express provision that the law enforcement officials have a duty to refrain from using force when policing assemblies; that use force should be the last resort and only when necessary and proportionate response to the behaviour of the protestors, to justify the right to life.

196. **Police Reforms Working Group- Kenya** proposed the deletion of subclause 1 and 2 and noted that the primary role of police in assemblies is to provide security and maintain law and order when necessary.

Committee Observations

197. The Committee observed that—

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

M. CLAUSE 14 - OFFENCES AND PENALTIES

198. **IPOA submitted** that Clause 14, grants the Cabinet Secretary broad powers to make regulations which could lead to broad executive control.

199. **Hannah Wamuyu** proposed a review of Clause 14(2) which prescribes sentencing in mandatory terms noting that it interferes with the discretion of the court.

200. **The National Police Service Commission** proposed an amendment of the Bill to make it an offence to injure police officers or cause damage to police property noting that the rights of demonstrators should not extend to taking away the rights of police officers. They also proposed to have a clear provision on noise during assemblies and demonstrations to prevent noise pollution during assemblies and demonstrations.

201. **Kenya ICT Action Network (KICTANet) and Access Now** proposed the decriminalisation and removal of criminal penalties for participation in assemblies, unless linked to acts of violence or serious unlawful conduct. They proposed the introduction of administrative remedies and warnings before considering prosecution noting that criminalisation disproportionately impacts public and discourages civic engagement.

202. **Katiba Institute** proposed the deletion of Clause 14 on the basis that the principle of proportionality would favour the retention of the fine but the deletion of the imprisonment.

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

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

Committee Observations-

207. The Committee observed that –

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

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

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

Committee observations

209. The Committee observed that—

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

PART IV

4.0 COMMITTEE OBSERVATIONS

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

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

PART V


5.0 COMMITTEE RECOMMENDATIONS

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

SIGN..... DATE.....

HON. GABRIEL TONGOYO, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & INTERNAL SECURITY

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