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NATIONAL ASSEMBLY BILLS, 2024

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**THE ASSEMBLY AND DEMONSTRATION BILL,
2024**

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**THE ASSEMBLY AND DEMONSTRATION BILL,
2024**

A Bill for

AN ACT of Parliament to give effect to Article 37 of the Constitution; to provide for the regulation of the right of assembly and demonstration; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Assembly and Demonstration Act, 2024.

Short title.

2. (1) In this Act, unless the context otherwise requires—

Interpretation.

“appropriate police office” means a police office or police station located in the Sub County in which the assembly is to be held;

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

“assembly notice” means a notice of intention to hold a public assembly, demonstration, picketing and presentation of petitions to public authorities;

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

“convener” means—

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

“demonstration” means an act of a person, or a group of persons associated under common objectives parading along, or displaying their will or vigorous determination in

public places available for the free movement of the general public, such as roads and parks, with the aim of exerting influence on the opinions of a large number of unspecified persons or overwhelming them;

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

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

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

“peaceful” includes conduct that may annoy or give offence to individuals or groups opposed to the ideas or claims that the assembly is seeking to promote and includes conduct that temporarily hinders, impedes or obstructs the activities of third parties and temporarily blocking traffic;

“public gathering” means any assembly, concourse or procession of more than 100 persons in or on any public road as defined in the Roads Act or any other public place or premises wholly or partly open to the air-

(a) at which the principles, policy, actions or failure to act of any government, political party or political organisation, whether or not that party or organisation is registered in terms of any applicable law in Kenya, are discussed, attacked, criticised, promoted or propagated; or

(b) held to form pressure groups, to hand over petitions to any person, or to mobilise or demonstrate support for or opposition to the views, principles, policy, actions or omissions of

any person or body of persons or institution, including any government, administration or governmental institution;

“police” means the Kenya Police Service;

“riot damage” means any loss suffered as a result of any injury to or death of any person, or any damage to or destruction of any property, caused directly or indirectly by, and immediately before, during or after, the holding of a gathering;

“place of assembly” in relation to a public assembly, demonstration, picketing and presentation of petitions to public authorities that is a procession, includes a place at or through which it is proposed the public assembly, demonstration, picketing and presentation of petitions to public authorities will stop or pass;

“public assembly” means an assembly held in a public place, whether or not the assembly is at a particular place or moving;

“public place” includes-

- (a) a road;
- (b) a place open to or used by the public as of right;
- (c) a place for the time being open to or used by the public whether or not-
 - (i) the place is ordinarily open to or used by the public;
 - (ii) by the express or implied consent of the owner or occupier; or
- (d) on payment of money; and

“regulating officer” means the officer-in-charge of the police station in the area in which a proposed assembly or demonstration is proposed to be held, or in the case of a public procession, the police officer-in-charge of the police station in the area in which the procession is proposed to start and to end.

3. The object and purpose of this Act is to—

- (a) recognise the right of peaceful assembly and demonstration;

Objects and
purposes of the
Act.

- (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 licence, permit or other authorisation.

4. This Act shall apply to all members of the public, and shall take into account the right of members of the public to—

Application.

- (a) enjoy the natural environment; and
- (b) carry on business.

5. This Act shall not affect the common law of trespass, including the right to request a trespasser to vacate the land or the right to remove the trespasser from the land.

Common law of trespass.

6. (1) The right to peacefully assemble or demonstrate under Article 37 of the Constitution may be limited under Article 24 of the Constitution in the manner specified in subsection (2).

Limitation of the right to peaceful assembly and demonstration.

(2) The right contemplated in subsection (1) may not be exercised by any person where such assembly or demonstration may affect—

- (a) public safety;
- (b) public order; and
- (c) the protection of the rights and freedoms of other persons.

PART II— APPLICATION FOR ASSEMBLY AND DEMONSTRATION

7. (1) A person shall not hold an assembly or demonstration except in accordance with the provisions of this section.

Application to hold assembly or demonstration.

(2) A person intending to convene an assembly or demonstration shall notify the regulating officer of such intent at least three days but not more than fourteen days before the proposed date of the assembly or demonstration.

(3) A notice under subsection (2) shall be in the form prescribed in regulations and shall 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 convener, if any;
- (c) the proposed date of the assembly or demonstration and the time thereof which shall be between six o'clock in the morning and six o'clock in the afternoon;
- (d) the proposed site of the assembly or demonstration or the proposed route in the case of a public procession.

(4) Where, upon receipt of a notice under subsection (2), it is not possible to hold the proposed assembly or demonstration for the reason that notice of another assembly or demonstration on the date, at the time and at the venue proposed has already been received by the regulating officer, the regulating officer shall forthwith notify the organiser.

(5) The notification by the regulating officer under subsection (4) shall be in writing and shall be delivered to the organiser at the physical address specified pursuant to the provisions of subsection (3).

(6) Where the regulating officer notifies the organiser of an assembly or demonstration in accordance with subsection (4) that it is not possible to hold the proposed assembly or demonstration, such assembly or

demonstration shall not be held on the date, at the time and venue proposed, but may, subject to this section, be held on such future date as the organiser may subsequently notify.

(7) The organiser of an assembly or demonstration or his authorised agent shall be present throughout the assembly or demonstration and shall assist the police in the maintenance of peace and order at the assembly or demonstration.

(8) A regulating officer or any police officer of or above the rank of inspector may stop or prevent the holding of—

- (a) any assembly or demonstration held contrary to the provisions of this section;
- (b) any assembly or demonstration which, having regard to the rights and interests of the persons participating in such assembly or demonstration, poses a present or imminent danger of a breach of the peace or public order,

and may, for any of the purposes aforesaid, give or 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.

(9) A person who neglects or refuses to obey any order given or issued under subsection (8) commits an offence.

(10) A person who takes part in an unlawful assembly or demonstration or holds, convenes or organises or is concerned in the holding, convening or organising of any such assembly or demonstration commits the offence of taking part in an unlawful assembly under Chapter IX of the Penal Code and liable to imprisonment for one year.

Cap. 63.

(11) The organiser of an assembly or demonstration may request the regulating officer that the police be present at such assembly or demonstration to ensure the maintenance of peace and order.

(12) A request under subsection (11) shall be in writing and shall be delivered to the regulating officer at least three days before the proposed date of the assembly or demonstration.

(13) The regulating officer shall keep a public register of all notices received under subsection (2).

(14) Any person may, during working hours, inspect the register kept under subsection (13).

8. (1) The regulating officer may, in a written notice, specify conditions for the holding of an assembly or demonstration.

Conditions for
conduct of
assembly or
demonstration.

(2) A condition under subsection (1) shall relate to—

(a) a matter concerning—

(i) public safety;

(ii) the maintenance of public order; or

(iii) 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.

9. (1) Where a condition is imposed under section 8, or where an assembly or demonstration is prohibited, the convener may apply to the High Court to set aside or vary such condition or to set aside such prohibition and the judge may refuse or grant the application.

Application to set
aside or vary
conditions.

(2) The application referred to in subsection (1) shall be filed within three days after receipt of the notice of imposition of a condition or prohibition.

(3) A condition or prohibition under this section shall remain in force until it is set aside or varied by the High Court.

(4) Where the High Court upholds the condition or prohibition, the regulating officer shall bar the place of the assembly or demonstration and keep it closed or inaccessible to the public for such time as may be necessary

to prevent the assembly or demonstration from taking place.

PART III— CONDUCT OF ASSEMBLY OR DEMONSTRATION

10. (1) A convener may appoint such number of marshals 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.

Conduct of assembly or demonstration.

(2) A convener shall ensure that the marshals specified in subsection (1) and participants in the assembly or demonstration are informed of the conditions of holding the assembly or demonstration.

(3) An assembly or demonstration shall proceed and take place at the locality and in the manner and during the times specified in the notice.

11. A person shall not, at an assembly or demonstration—

Prohibitions 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) perform any act or utter any words that are calculated or likely to cause or encourage violence against any person or group of persons;
- (c) wear a disguise or mask or any other apparel or item which obscures his face or prevents his identification;
- (d) wear any form of apparel that resembles any of the uniforms worn by security forces including the police and Kenya Defence Force; or
- (e) possess any offensive weapon, otherwise than in pursuance of lawful authority.

12. (1) Where, during the carrying on of an assembly or demonstration, damage to property occurs as a result of the assembly or demonstration, every organisation and every person participating in such assembly or demonstration shall, subject to subsection (2), be jointly and severally liable for such damage.

Liability for damage.

(2) It shall be a defence to a claim against a person or organisation contemplated in subsection (1) if such a person or organisation proves—

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

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

13. During the conduct of an assembly or demonstration, the police may—

- (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;

Powers of the police during assembly or demonstration.

- (d) take such steps as may be necessary to protect persons and property, whether or not they are participants in the assembly or demonstration.

14. (1) A person shall not—

Offences and penalties.

- (a) convene a public assembly with no or adequate notice;
- (b) knowingly contravene or fail to comply with the notice of a condition to which an assembly or demonstration is subject to;
- (c) hinder, interfere with, obstruct or resist a police officer, convener, marshal or any other person in the exercise of his powers or the performance of his duties under this Act; or
- (d) be in possession of a weapon or any object unlawfully during an assembly or demonstration.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding one year, or to both.

PART IV— PROVISIONS ON DELEGATED POWERS

15. (1) The Cabinet Secretary may make regulations for the better carrying into effect of the provisions of this Act.

Regulations.

(2) For the purposes of Article 94(6) of the Constitution—

- (a) the purpose and objective of delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect of the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and to fulfil the objectives specified under this section; and
- (c) the principles and standards applicable to the regulations made under this section are those set

out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

PART V – REPEAL

16. The Public Order Act is amended by–

- (a) repealing section 5; and
- (b) repealing section 6.

Repeal of sections
5, 6 of Cap. 56.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

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

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

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

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

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

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

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill delegates legislative powers to the Cabinet Secretary and limits fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill does not concern county governments in terms of Article 110 of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 25th April, 2024.

GEOFFREY KIRINGA RUKU,
Member of Parliament.