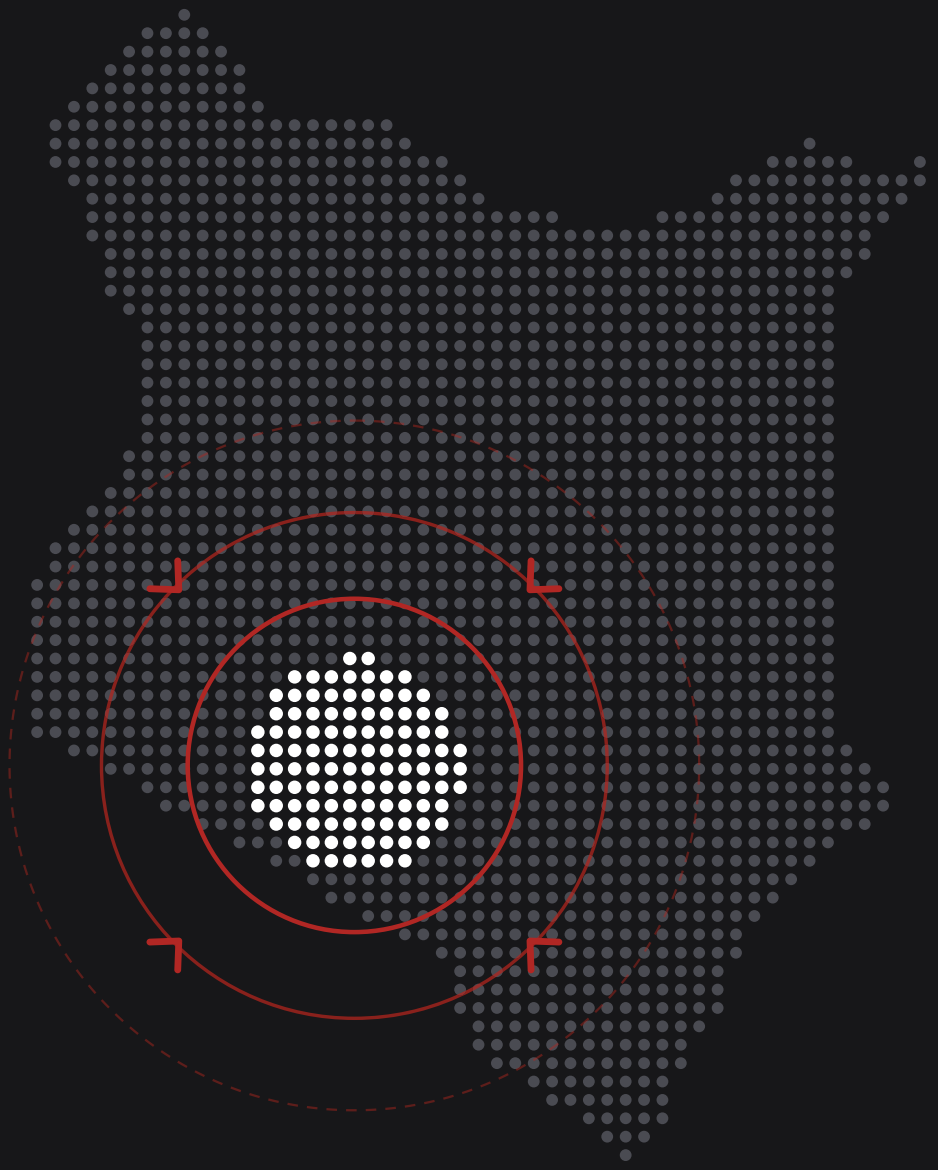
Kenya Human Rights Commission

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2026

PERIOD OF ANALYSIS

2021 — 2026



COMPENDIUM ON

Civic Space Laws in Kenya

An Examination of Emerging Trends and Their Impact on Existing Civic Space Laws, Proposed Amendments, and Regulations

KENYA HUMAN RIGHTS COMMISSION

FORWARD

Civic space is the foundation upon which constitutional democracy, accountable governance, human rights protection, and meaningful public participation are built. It is through civic space that citizens organize, speak, assemble, associate, access information, challenge abuse of power, and participate in decisions that affect their lives. When civic space is protected, democracy is strengthened, and participation in meaningful development is sustained. When it is restricted, the rule of law, public trust, and constitutional governance are weakened, while societal ills such as corruption, looting, and impunity increase.

This second edition of the Compendium on Civic Space Laws in Kenya comes at a critical moment in the country's democratic journey. The period between 2021 and 2026 has been marked by significant legal, political, technological, judicial, and governance developments that have reshaped the environment in which citizens, civil society organizations, journalists, human rights defenders, social movements, and community actors exercise their fundamental freedoms.

Kenya has a progressive constitutional framework that guarantees freedom of expression, association, peaceful assembly, access to information, privacy, public participation, and security of the person. The Constitution of Kenya, 2010, remains a powerful safeguard for democratic participation and human dignity. The judiciary has sometimes played an essential role in defending constitutionalism, checking executive excesses, protecting public participation, and affirming the rights of citizens and civic actors.

At the same time, this Compendium documents a more complex and concerning reality. Civic participation has increasingly been framed through the lens of national security, public order, cyber regulation, financial compliance, and administrative control. Protesters, journalists, activists, bloggers, human rights defenders, civil society organizations, and ordinary citizens have faced growing risks, including arbitrary arrests, excessive use of force, surveillance, online harassment, disinformation, intimidation, enforced disappearances, and restrictions on lawful civic activity.

The Compendium also draws attention to emerging forms of repression involving state and non-state actors. Politically sponsored violence through a "goon culture," coordinated digital attacks, misinformation campaigns, and intimidation of dissenting voices now form part of the contemporary civic space landscape. These developments require urgent, principled, and coordinated responses grounded in the Constitution, international human rights standards, and the rule of law.

Yet this report is not only a record of restriction. It is also a record of resilience. The rise of youth-led movements, digital civic action, grassroots organizing, public interest litigation, legal aid networks, independent journalism, and rights-based advocacy demonstrates that Kenya's civic space remains dynamic and alive. The 2024 anti-Finance Bill protests, in particular, revealed the transformative capacity of digitally connected citizens to demand accountability, transparency, and responsive governance.

This Second Edition, therefore, serves as a reference tool and a call to action. It provides policymakers, civil society organizations, constitutional commissions, oversight bodies, development partners, media actors, legal practitioners, researchers, and citizens with a structured analysis of the laws, policies, practices, and emerging trends shaping civic freedoms in Kenya. It also offers practical recommendations and an advocacy roadmap to strengthen civic space, reform restrictive laws, improve institutional accountability, and protect democratic participation.

As Kenya approaches the 2027 General Election, protecting civic space will be decisive. A free, safe, and enabling civic environment is essential for credible elections, peaceful political participation, public accountability, and social cohesion. Kenya must never return to the dark days of 2007/8, when the country almost descended into civil war because the ruling elite thought that they must hold on to power at all costs. Security and governance objectives must never be pursued in a manner that diminishes constitutional rights. Instead, they must be implemented in ways that protect human dignity, uphold the rule of law, and strengthen democratic participation.

It is my hope that this Compendium will support informed dialogue, evidence-based reform, institutional accountability, and renewed commitment to the constitutional promise of an open, democratic, rights-respecting Kenya.

Maina Kiai

Chairman, Kenya Human Rights Commission (KHRC)

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LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
AFRICOG	The Africa Centre for Open Governance
AML	Anti-Money Laundering
BAKE	Bloggers Association of Kenya
CAJ	Commission on Administrative Justice
CAK	Communications Authority of Kenya
CBI	Central Bureau of Investigation
CBOs	Community-Based Organisations
CFF	Civic Freedoms Forums
CGRA	Community Groups Registration Act, 2022
CIPESA	Collaboration on International ICT Policy for East and Southern Africa
CORD	Coalition for Reforms and Democracy
COVID-19	Coronavirus disease of 2019
CRC	Convention on the Rights of the Child
CRS	Compagnies Républicaines de Sécurité
CSOs	Civil Society Organizations
DCI	Directorate of Criminal Investigations
EAC	East African Community
EACJ	East African Court of Justice
EAPN	East African Philanthropy Network
EctHR	European Court of Human Rights
ENDF	Ethiopian National Defense Force
FATF	Financial Action Task Force
FCRA	Foreign Contribution Regulation Act
FOAA	AU Guidelines on Freedom of Association and Assembly
FRT	Facial Recognition Technology
GDPR	General Data Protection Regulations
Gen-Z	Generation Z
HRD	Human Rights Defender
ICT	Information and Communications Technology
IMF	International Monetary Fund
IPOA	Independent Policing Oversight Authority
ISO	Internal Security Organisation
KANU	Kenya African National Union
KBC	Kenya Broadcasting Corporation
KCDF	Kenya Community Development Foundation
KEPSA	Kenya Private Sector Alliance
KICA	Kenya Information and Communication Act
KLRC	Kenya Law Reforms Commission
KMSWG	Kenya Media Sector Working Group
KNBS	Kenya National Bureau of Statistics
KNCHR	Kenya National Commission on Human Rights
LAPSSET	Lamu Port-South Sudan-Ethiopia-Transport
LGBTQ+	Lesbian, Gay, Bi, Trans and Queer+ Community
LSK	Law Society of Kenya
MCK	Media Council of Kenya
MUHURI	Muslims for Human Rights

N4Cs	National Computer and Cybercrimes Co-ordination Committee
NACOSTI	National Council for Science and Technology Innovation
NARC	National Alliance Rainbow Coalition
NCTC	National Counter Terrorism Centre
NGCDF	National Government Constituency Development Fund
NGOs	Non-Governmental Organizations
NIIMS	National Integrated Identity Management System
NISS	National Intelligence and Security Service
NPSC	National Police Service Commission
OAU	Organization of African Unity
ODPP	Office of the Director of Public Prosecutions
OHCHR	Office of the United Nations High Commissioner for Human Rights
PBORA	Public Benefit Organizations Regulatory Authority
PHEOC	Public Health Emergency Operations Centre
PLC	Public Limited Company
POCAMLA	Proceeds of Crime and Anti-Money Laundering Act
POTA	Prevention of Terrorism Act
PPC	Personal Information Protection Commission
PRWG	Police Reforms Working Group
SJCWG	Social Justice Centers Working Group
SLAPP	Strategic Lawsuits Against Public Participation
TISA	The Institute for Social Accountability
TPLF	Tigray People's Liberation Front
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
VASPs	Virtual Asset Service Providers
VAT	Value Added Tax
WPA	Witness Protection Agency

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EXECUTIVE SUMMARY

This second edition of the Compendium on Civic Space Laws in Kenya builds on the foundation established by the first edition by documenting and analysing the legal, policy, judicial, and governance developments that have shaped civic space between 2001 and 2026. It examines laws, proposed legislative amendments, regulatory frameworks, judicial decisions, and governance practices affecting freedom of expression, access to information, privacy and data protection, freedom of association, freedom of peaceful assembly, and the right to security of the person. It also assesses the extent to which Kenya's legal and regulatory framework complies with constitutional guarantees and international human rights obligations, including those contained in the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR).

The review finds that Kenya continues to have a progressive constitutional framework that provides important safeguards for civic freedoms. The judiciary remained an important institutional safeguard through decisions that reinforced constitutionalism, accountability, public participation, privacy, and freedom of expression. Independent institutions, civil society organisations, journalists, human rights defenders, and citizens also continued to play a significant role in protecting democratic governance and expanding civic engagement.

The Compendium identifies a civic space increasingly shaped by securitisation and the use of legal, administrative, technological, and extra-legal measures to regulate participation and dissent. Public order, cybercrime, counterterrorism, and administrative laws have increasingly been used in ways that affect civic activities. Concerns have also grown around surveillance and data governance, while arbitrary arrests, enforced disappearances, extrajudicial killings, and excessive use of force during public demonstrations remain significant threats to the enjoyment of fundamental rights.

A notable finding of this edition is the emergence of hybrid forms of civic space repression involving state and non-state actors. Evidence emerged of criminal gangs, otherwise known as goons, being deployed to infiltrate or disrupt peaceful protests, intimidate activists, attack journalists, and undermine citizen-led movements. At the same time, politically aligned bloggers, influencers, and coordinated online networks increasingly used disinformation, online harassment, and digital intimidation against government critics, activists, and other independent voices. The convergence of these physical and digital forms of repression has contributed to a chilling effect on freedom of expression, peaceful assembly, and public participation.

These challenges have emerged alongside important changes in how citizens organise and participate in public affairs. Youth-led and digitally enabled movements have become increasingly influential in shaping public discourse and demanding accountability. The 2024 anti-Finance Bill protests demonstrated the power of decentralised digital mobilisation and marked a significant shift in how citizens, particularly young people, organise, communicate, and engage with governance processes. At the same time, the protests exposed the vulnerabilities of digitally enabled civic action, including the risks of surveillance, online intimidation, disinformation, and restrictions on assembly and expression.

Despite these challenges, the review identifies significant resilience within Kenya's civic space. Progressive judicial decisions, greater public awareness of constitutional rights, increased citizen participation, and the growing influence of youth-led movements demonstrate that civic actors continue to find ways to organise, mobilise, and demand accountability.

As Kenya approaches the 2027 General Election, protecting civic space will be particularly important for democratic governance and public accountability. The findings of this Compendium underscore the need to strengthen constitutionalism, judicial independence, institutional accountability, and human rights protection, while ensuring meaningful citizen participation in public affairs. They also point to the need for legal and policy reforms that respond to emerging threats, including digital surveillance, online intimidation, and the misuse of regulatory and security frameworks, without undermining constitutionally protected freedoms. Ultimately, this Compendium demonstrates that Kenya's civic space remains contested and resilient.

CHAPTER 1

INTRODUCTION, STUDY OBJECTIVES, METHODOLOGY

1.1 Introduction

Civic space is central to the functioning of a constitutional democracy. It provides the environment within which individuals and groups exercise their rights to freedom of expression, association, peaceful assembly, access to information, participation in public affairs and other fundamental freedoms. It is also the space within which civil society organisations, journalists, human rights defenders, social movements, communities and other civic actors engage public institutions, advocate for reform, demand accountability and participate in governance.

In Kenya, the protection of civic space is anchored in the Constitution of Kenya, 2010, particularly the Bill of Rights. The Constitution provides extensive guarantees for freedom of expression, access to information, freedom of association, peaceful assembly, privacy, public participation and the security of the person. These protections are reinforced by Kenya's obligations under regional and international human rights instruments, including the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR).

However, constitutional guarantees alone do not determine the state of civic space. The practical enjoyment of civic freedoms is also shaped by legislation, policies, regulations, institutional practices, judicial decisions, political developments, security measures, technology and the broader relationship between citizens and the State. Civic space must, therefore, be understood through the laws that formally protect rights, and through the ways in which those laws and institutions are applied and experienced by civic actors.

The Second Edition of the Compendium on Civic Space Laws in Kenya builds on the first edition, published in 2021, when Kenya was emerging from the COVID-19 pandemic and preparing for the 2022 General Election. The current edition covers the period from 2021 to 2026, during which Kenya's civic and democratic space has undergone significant changes. These changes have occurred alongside wider developments at the national, regional and international levels and have altered the opportunities for civic participation and the nature of the threats facing civic actors.

The period under review has been marked by growing concern about the global and regional recession of democratic space, including the rise of more security-oriented and restrictive approaches to governance. In the East and Horn of Africa and elsewhere on the continent, concerns about transnational repression have also gained prominence, with governments increasingly able to reach across borders to intimidate, silence or otherwise target dissidents, journalists, activists and other critics. Such developments have implications for civic space in Kenya and beyond, particularly as traditional safe havens for civic actors become less secure.

Kenya's civic space must also be understood in light of the country's longer history of legal and institutional regulation of dissent. Some of the laws and institutions that continue to shape civic participation have their origins in the colonial and post-independence periods. Although the 2010 Constitution established a substantially different constitutional order based on human rights, democratic participation, constitutionalism and the rule of law, the continued application and adaptation of older legal

and institutional frameworks remains an important part of understanding contemporary restrictions on civic space.

During the period covered by this Compendium, these longstanding mechanisms have intersected with newer forms of restriction. The use of criminal, public order, cybercrime, counterterrorism, administrative and regulatory frameworks has increasingly become part of debates about the limits of civic participation. The concept of "lawfare" has also emerged in public and civic discourse to describe situations in which legal and institutional mechanisms are perceived to be used to constrain dissent or burden civic actors. The Compendium examines these developments without treating the law merely as a neutral instrument of regulation; it considers how legal powers are interpreted, applied and contested in practice.

The nature of civic mobilisation has also changed significantly. Digital platforms have become central to organising, political communication, documenting human rights violations, and public participation. This was particularly evident during the 2024 protests against the Finance Bill and, in 2025, on the June 25 anniversary, when young Kenyans used digital technologies and social media to organise and mobilise large-scale public action. The experience demonstrated the growing importance of digitally enabled civic participation while also exposing civic actors to new forms of surveillance, online harassment, intimidation, disinformation and other forms of digital repression.

The expansion of online civic space has, therefore, been accompanied by an expansion of efforts to regulate and control it. Laws and institutions governing communications, cybercrime, data, public order and national security increasingly intersect with digital participation. This has created new questions about privacy, surveillance, access to information, freedom of expression and the extent to which the State can regulate online activity without undermining constitutionally protected rights.

At the same time, restrictions on civic space have not been limited to formal laws and state institutions. The period under review has witnessed concerns about criminal gangs, otherwise known as goons, who have been politically deployed to disrupt protests, intimidate civic actors and interfere with public participation. Online networks, bloggers and influencers have also become part of the changing civic environment, sometimes contributing to harassment, intimidation and disinformation. These developments point to an increasingly complex form of civic space restriction in which formal legal mechanisms, institutional practices, physical intimidation, and digital tactics can operate alongside one another.

The use of criminal and administrative powers has also become an important feature of this environment. The Compendium examines the use of laws relating to public order, criminal offences, cybercrime, community registration, torture prevention, communications and media regulation, among others. It also considers how counterterrorism, treason-related allegations, and taxation and regulatory powers may affect civic actors and contribute to a chilling effect when such powers are applied in ways that discourage legitimate expression, association, advocacy, or protest.

These developments have particular consequences for groups and actors that are central to Kenya's civic and democratic life. Human rights defenders, civil society organisations, journalists, religious movements, opposition politicians, youth, social justice movements, and LGBTQI+ actors have faced various forms of legal, political, physical, or digital pressure. The Compendium, therefore, considers civic space broadly, recognising that meaningful participation is difficult where individuals and groups face intimidation, arbitrary arrest, enforced disappearance, torture, excessive use of force, surveillance, harassment or other threats to their safety and security.

The institutional response to these challenges is equally important. Public institutions, including the National Police Service, the Communications Authority of Kenya, the Kenya Revenue Authority and Parliament, exercise powers that can significantly affect civic space. Their actions, together with those of other state institutions, are examined alongside the role of the courts and independent institutions in protecting constitutional rights. Judicial decisions during the period under review demonstrate that courts remain an important avenue for challenging legislation, administrative action and other measures that affect civic freedoms.

The picture is, therefore, not one of restriction alone. Kenya's civic space has also demonstrated considerable resilience. Young people and other civic actors have continued to organise online and offline. Civil society organisations, journalists, human rights defenders, communities and social movements have continued to use litigation, advocacy, public participation and digital platforms to defend rights and demand accountability. The Constitution and the courts have remained important sources of protection,

even as questions continue to arise about the implementation of constitutional guarantees.

It is against this background that this Second Edition examines the legal and institutional environment governing civic space in Kenya. The Compendium documents and analyses more than 25 legal and institutional frameworks, including laws, proposed amendments, regulations, policies and institutional mechanisms that affect freedom of expression, access to information, association, peaceful assembly, privacy and data protection, and the freedom and security of the person. It also examines relevant judicial decisions and assesses these developments against Kenya's constitutional framework and its obligations under regional and international human rights law.

The Compendium is particularly relevant as Kenya approaches the 2027 General Election. Elections are periods of heightened political participation, public debate and mobilisation and can expose existing weaknesses in the protection of civic freedoms. Understanding the laws, institutions and practices that shape civic space is therefore important for ensuring that citizens, civic actors and public institutions can participate in electoral and governance processes within the framework of the Constitution and human rights law.

This edition is intended as a reference and analytical resource for civil society organisations, policymakers, researchers, human rights defenders, development partners, legal practitioners, journalists and citizens. It does more than catalogue laws. It examines how legal and institutional frameworks interact with political, technological and social developments to shape the actual space available for civic participation.

The chapters that follow examine these developments in greater detail. The Compendium first considers the emerging dynamics of civic space during the period under review, including securitisation, digital mobilisation, judicial intervention and new forms of repression. It then examines the legal and institutional frameworks governing freedom of association, freedom of expression, peaceful assembly, and the freedom and security of the person. The final chapter draws together the principal findings and proposes measures to strengthen constitutionalism, accountability, democratic participation, and the protection of civic space in Kenya.

1.2 Objectives of the Study

Overall Objective

The overall objective of this study was to develop a comprehensive, updated, and analytically robust Compendium of Civic Space Laws in Kenya that reflects contemporary legal, political, technological, and governance developments affecting civic freedoms and democratic participation.

Specific Objectives

The study sought to:

1. Examine existing laws, proposed legislative amendments, regulations, and policies affecting civic space in Kenya, including freedoms of expression, association, assembly, access to information, privacy, and security of the person.
2. Analyze judicial decisions and jurisprudential developments that have shaped the interpretation and enforcement of civic space rights and freedoms.
3. Assess the extent to which Kenya's legal and regulatory framework complies with international and regional human rights standards, including obligations arising under the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, and other relevant instruments.
4. Identify emerging civic space trends and challenges, including digital governance, surveillance, online expression, securitization of civic participation, youth-led activism, and evolving state-citizen relations.
5. Document patterns of implementation and enforcement of civic space laws and evaluate their practical implications for civic actors.
6. Generate evidence-based recommendations aimed at strengthening civic freedoms, democratic governance, accountability, and constitutionalism in Kenya.

1.3 Working Definition of Civic Space

This study adopts a definition that moves beyond the traditional formulation - which primarily focuses on the freedoms of expression, association, and peaceful assembly - and recognize that in contemporary Kenya, civic participation is increasingly shaped by the broader environment of personal security, bodily

integrity, digital safety, and protection from arbitrary state and non-state violence. This is informed by the recent experiences involving enforced disappearances, abductions, extrajudicial killings, arbitrary arrests, police brutality, online harassment, surveillance, and attacks by politically sponsored actors demonstrating that citizens cannot meaningfully exercise civic freedoms where their personal liberty and security are under threat.

For the purposes of this Compendium, civic space refers to the legal, political, social, economic, physical, and digital environment within which individuals, communities, civil society organizations, media actors, social movements, and other non-state actors exercise their constitutional rights and freedoms to express opinions, access information, associate, assemble, participate in public affairs, and influence decisions that affect their lives.

Civic space encompasses not only the freedoms of expression, association, and peaceful assembly, but also the conditions necessary for the meaningful enjoyment of those freedoms, including the right to liberty, dignity, privacy, bodily integrity, and freedom and security of the person as guaranteed under Article 29 of the Constitution of Kenya, 2010. It recognizes that citizens can only participate effectively in civic and democratic life where they are free from intimidation, arbitrary arrest, enforced disappearance, torture, extrajudicial violence, surveillance, harassment, and other forms of coercion by both state and non-state actors.

Accordingly, civic space should be understood as the extent to which individuals and groups can safely, freely, and meaningfully organize, communicate, assemble, advocate, dissent, and participate in governance processes without fear of physical harm, unlawful restriction, retaliation, or repression in either physical or digital spaces.

This definition acknowledges that contemporary threats to civic space extend beyond formal legal restrictions and include emerging forms of control and repression such as digital surveillance, online harassment, disinformation campaigns, politically sponsored violence, technology-facilitated intimidation, and other practices that undermine citizens' ability to exercise their constitutional rights and democratic agency.

A vibrant civic space therefore exists where both civic freedoms and personal security are protected, enabling citizens to participate in public life openly, safely, and without fear. Conversely, civic space is considered restricted where individuals or groups face legal, physical, digital, economic, psychological, or political barriers that inhibit the exercise of their rights, freedoms, and democratic participation.

1.4 Methodology

Research Design

The study adopted a mixed-methods socio-legal research design combining doctrinal legal research, socio-legal inquiry, qualitative data collection, and comparative legal analysis. This approach enabled the study to examine both the formal legal framework governing civic space and the practical realities of implementing and enforcing civic space laws.

The methodology was informed by a human rights-based approach and principles of constitutionalism, democratic governance, rule of law, accountability, and participation. It further drew upon critical legal studies perspectives that recognize the relationship between law, power, governance, and civic participation.

Doctrinal Legal Research

The study primarily employed doctrinal legal research to analyze the legal framework governing civic space in Kenya. The review examined constitutional provisions, statutes, subsidiary legislation, regulations, government policy instruments, parliamentary reports, gazette notices, and judicial decisions relevant to civic freedoms. Particular attention was given to laws enacted, amended, proposed, or operationalized between 2021 and 2026.

The review further incorporated analysis of decisions from Kenyan courts, regional tribunals, and international human rights bodies in order to identify evolving jurisprudential trends affecting civic space.

Desktop Review

A comprehensive desk review was undertaken to collect and analyze both primary and secondary sources. The review included:

- The Constitution of Kenya, 2010;
- National legislation and proposed Bills affecting civic space;
- Judicial decisions and constitutional petitions;
- Government policy documents and regulatory guidelines;
- Parliamentary reports and committee proceedings;
- Reports by independent commissions and oversight institutions;
- Academic literature and scholarly publications;
- Civil society reports and policy briefs;
- International and regional human rights instruments and interpretive standards.

The desktop reviews identified legal developments, emerging trends, implementation challenges, and gaps in the current civic space framework.

Socio-Legal Analysis

To complement doctrinal analysis, the study adopted a socio-legal approach to examine how laws operate in practice and affect civic actors. The analysis considered patterns of enforcement, state responses to civic action, institutional practices, and experiences of individuals and organizations operating within Kenya's civic space. Particular attention was given to issues such as protest management, arrests, prosecutions, surveillance, enforced disappearances, online regulation, and restrictions on civic participation.

Key Informant Interviews

Qualitative data were collected through key informant interviews with selected stakeholders, including civil society leaders, human rights defenders, legal practitioners, academics and researchers, journalists and media practitioners, digital rights advocates, and governance and public policy experts.

The interviews provided contextual insights, validated doctrinal findings, and helped identify emerging issues affecting civic space in Kenya.

Stakeholder Validation

Preliminary findings were subjected to stakeholder review and validation through consultative forums and expert discussions. These engagements enabled participants to interrogate findings, identify omissions, and strengthen the accuracy and relevance of the analysis.

Comparative and Scenario Analysis

The study incorporated comparative analysis of civic space developments within the East African region and selected global jurisdictions. Comparative experiences from countries such as Uganda, Tanzania, Ethiopia, India, Russia, and France were examined to contextualize emerging trends in civic space regulation and securitization.

In addition, a scenario-building approach was utilized to assess potential future trajectories of civic space governance, particularly in relation to the 2027 General Election and its implications for civic participation, democratic governance, and constitutional rights.

1.5 Limitations of the Study

The study encountered several limitations.

First, the civic space landscape remained highly dynamic throughout the study period, with frequent legislative proposals, policy changes, court decisions, and political developments occurring during the research. Consequently, some developments may have evolved after the completion of data collection and analysis.

Second, certain incidents involving surveillance, intimidation, enforced disappearances, and restrictions on civic actors were difficult to independently verify due to limited public documentation, ongoing investigations, or concerns regarding witness safety.

Third, access to some government records, internal policy documents, and administrative data relevant to civic space regulation was restricted, limiting the ability to comprehensively assess state decision-making processes.

Fourth, stakeholder perceptions collected through interviews may have been influenced by personal experiences, institutional affiliations, and political contexts. To mitigate this limitation, information was triangulated using multiple sources and documentary evidence.

Fifth, the study primarily focused on legal and governance developments occurring between 2021 and 2026 and therefore did not provide an exhaustive historical analysis of civic space regulation in Kenya.

Despite these limitations, the use of multiple data sources, stakeholder validation processes, doctrinal analysis, and comparative research strengthened the reliability, credibility, and overall robustness of the study findings.

CHAPTER 2

EMERGING CIVIC SPACE DYNAMICS (2021–2026)

2.1 Introduction

For the past half-decade, Kenya's civic space underwent profound transformation shaped by political transition, economic instability, digital disruption, youth-led mobilization, and the increasing securitization of governance. While the Constitution of Kenya, 2010 envisioned a democratic state founded on participation, accountability, and the protection of fundamental freedoms, the period witnessed growing tension between constitutional guarantees and expanding state efforts to regulate, contain, and suppress civic action. Increasingly, civic space restrictions evolved from overt authoritarian practices into more sophisticated forms of legal, institutional, administrative, and economic repression.[1]

The period was characterized by the rapid evolution of citizen engagement, particularly among young people. Digital platforms such as X (formerly Twitter), TikTok, Facebook, and Instagram emerged as alternative democratic spaces for civic education, protest mobilization, whistleblowing, and political accountability. Unlike traditional civil society movements, these emerging forms of activism were decentralized, leaderless, and highly adaptive, enabling rapid mobilization around governance failures, corruption, police brutality, taxation, unemployment, and electoral accountability. The rise of digitally driven civic organizing fundamentally altered the relationship between citizens and the state, creating new opportunities for participation while simultaneously triggering new forms of state surveillance and control.[2]

In response, the state increasingly adopted securitized approaches to civic engagement, framing dissent, protest, and digital activism as threats to national stability, economic order, and public security. This period saw the growing use of legislation, regulatory mechanisms, administrative directives, and institutional intimidation to constrain civic action while maintaining the formal appearance of constitutional governance. Rather than relying solely on direct bans or violent crackdowns, restrictions were increasingly embedded within legal and bureaucratic systems that expanded executive discretion and narrowed democratic protections.

One of the defining features of this period was the weaponization of state institutions against dissenting voices, civil society organizations, journalists, human rights defenders, and political critics. Institutions originally established to promote accountability, financial regulation, criminal investigation, and public administration increasingly became instruments for political pressure and civic suppression. The Kenya Revenue Authority (KRA), for instance, was repeatedly accused of initiating selective tax investigations and audits targeting vocal civil society actors and organizations perceived to be critical of government policies. Similarly, the Directorate of Criminal Investigations (DCI) increasingly featured in cases involving intimidation, arbitrary summons, surveillance, arrests, and investigations targeting activists, protest organizers, bloggers, and journalists under the guise of combating cybercrime, terrorism, incitement, or misinformation.[3]

1 Civic Freedom Forum (2024). Civic and Democratic Space Index in Kenya. Nairobi: Civic Freedom Forum. Published March 27, 2024
2 CIVICUS. (2024). State of Civic Space Report 2024. Johannesburg: CIVICUS.
3 Amnesty International Kenya. (2023). Kenya: Human Rights Defenders Under Pressure. Nairobi: Amnesty International Kenya.

Commercial banks and financial regulatory systems also emerged as sites of civic repression through unexplained account freezes, enhanced scrutiny of civil society transactions, delays in processing organizational funds, and heightened compliance burdens directed at organizations receiving foreign funding or engaging in governance and accountability work. Such tactics mirrored broader global trends where financial systems have increasingly been used to restrict civic action through "financial de-risking," anti-money laundering frameworks, and counterterrorism financing regulations.[4]

Equally concerning was the use of regulatory agencies overseeing civil society organizations to exert administrative pressure and control over civic actors. Delayed registration processes, threats of deregistration, selective enforcement of compliance requirements, and bureaucratic obstacles became common methods of restricting civic operations. Although Kenya possesses progressive constitutional protections for freedom of association, administrative practices increasingly undermined these guarantees through procedural and regulatory barriers. This trend was particularly evident in the prolonged delay in operationalizing the Public Benefits Organizations (PBO) Act, 2013. Despite being enacted to establish a more enabling legal environment for civil society organizations, the Act remained dormant for over a decade due to sustained executive resistance and political reluctance to cede administrative control over the civic sector.[5]

Alongside these developments, the period witnessed growing efforts to amend or dilute progressive civic space laws to align them with prevailing state interests. Proposed amendments to public order, cybercrime, media, and NGO regulatory frameworks increasingly reflected securitized governance approaches that prioritized state control over constitutional freedoms. Vague provisions relating to misinformation, cyber harassment, unlawful assembly, and national security created opportunities for selective enforcement and abuse against dissenting voices. Such legal developments mirrored continental and global patterns where governments increasingly rely on legal instruments to institutionalize civic restrictions while avoiding overt authoritarian characterization.[6]

The capture and weakening of independent oversight institutions further compounded these challenges. Institutions constitutionally mandated to provide checks and balances -including independent commissions, oversight authorities, and accountability agencies -faced growing political interference, budgetary manipulation, partisan appointments, and operational intimidation. In some instances, oversight bodies appeared increasingly reluctant to challenge executive excesses or publicly defend civic freedoms, contributing to declining public trust in democratic institutions. The erosion of institutional independence weakened constitutional safeguards intended to protect accountability, transparency, and the rule of law.

At the same time, the judiciary emerged as both a critical site of democratic resistance and a contested arena of political struggle. Kenyan courts issued significant decisions safeguarding constitutional rights, restraining unlawful executive actions, and affirming civic freedoms, particularly in matters relating to taxation, digital rights, and abuse of state power. However, judicial interventions were frequently met with hostility, delayed implementation, or outright non-compliance by state actors, reflecting persistent tensions between constitutionalism and executive authority.[7] Concerns also emerged regarding delays in determining public interest litigation, inconsistent jurisprudence on protest rights, and the issuance or upholding of conservatory orders that restricted demonstrations and civic mobilization. Additionally, some judicial decisions relating to cybercrime regulation, public order management, defamation, and administrative compliance for civil society organizations were perceived by sections of civil society as legitimizing restrictive state narratives and contributing to the gradual shrinking of civic space.

Kenya's experience during this period closely mirrored broader regional and global trends in democratic backsliding and civic space repression. Across Africa, Asia, Europe, and Latin America, governments increasingly weaponized legal systems, regulatory agencies, financial controls, and digital surveillance tools to suppress dissent while maintaining formal democratic structures. In Uganda and Tanzania, NGO regulations and public order laws were used to silence civil society organizations and opposition actors. Uganda's controversial "Protection of Sovereignty" Bill imposes sweeping restrictions on organizations and individuals receiving foreign funding. In India, amendments to the Foreign Contribution Regulation Act (FCRA) significantly restricted access to foreign funding for human rights organizations and advocacy groups. Egypt and Ethiopia expanded the use of cybercrime and anti-terrorism laws to criminalize online activism and independent journalism. In Russia, "foreign agent" laws were weaponized against civil

4 International Center for Not-for-Profit Law (ICNL). (2022). Financial Action Task Force Standards and Civic Space. Washington, D.C.: ICNL.

5 Kenya Human Rights Commission (KHRC). (2023). The Delayed Promise: Civic Space and the Operationalization of the PBO Act. Nairobi: KHRC.

6 CIVICUS Monitor. (2025). People Power Under Attack: Global Trends in Civic Space Restrictions. Johannesburg: CIVICUS.

7 KHRC (2023), Case on the Finance Act of 2023 Available at https://khrc.or.ke/case/finance-act-of-2023-case/

society organizations, media houses, and human rights defenders critical of state policies.[8]

Globally, the COVID-19 pandemic accelerated many of these authoritarian tendencies by normalizing emergency powers, surveillance technologies, restrictions on assembly, and executive control over public participation. Although many emergency measures were initially justified on public health grounds, several governments retained or repurposed these powers long after the immediate crisis had subsided.

The period during the period of analysis therefore represents a critical phase in Kenya's democratic trajectory. Civic space restrictions increasingly shifted from overt repression to more institutionalized, legally mediated, and economically enforced forms of control. Consequently, the struggle for civic freedoms expanded beyond resistance to direct violations and increasingly involved contesting the subtle erosion of democratic protections through law, policy, institutional capture, financial regulation, and administrative practice.

This chapter examines these evolving civic space dynamics within Kenya's constitutional, political, and governance landscape while situating them within broader regional and global patterns of democratic regression, securitization, and resistance.

2.2 Securitization of Civic Space

Introduction

During the period of analysis, Kenya witnessed a significant transformation in the governance of civic space characterized by increasing securitization of dissent, civic mobilization, digital activism, and civil society operations. Civic space, broadly understood as the environment that enables individuals and groups to organize, participate, communicate, and influence governance processes, increasingly became framed through the lens of national security, public order, and state stability.

During this period, the Kenyan state progressively relied on security institutions, counterterrorism frameworks, cybercrime regulations, and administrative control mechanisms to regulate civic participation and suppress perceived threats to political order. Although securitization has historically been associated with counterterrorism and violent extremism, the concept increasingly expanded to encompass protests, online activism, civil society advocacy, and opposition politics.[9]

The securitization of civic space reflected broader global and regional democratic regression trends in which governments increasingly used legal and security frameworks to justify restrictions on freedoms of assembly, association, and expression. In Kenya, these developments emerged against a backdrop of economic hardship, rising public debt, youth unemployment, electoral contestation, and declining public trust in state institutions. Consequently, civic mobilization intensified, particularly among digitally connected youth movements demanding accountability, economic justice, and police reforms. However, the state increasingly responded to these developments through securitized governance approaches that blurred the distinction between legitimate civic action and threats to national security.[10]

2.2.1 Conceptualizing the Securitization of Civic Space

Many civic space practitioners have long misunderstood the term "securitization of civic space," equating it primarily with the visible deployment of police, military, or paramilitary forces to suppress protests or dissent. This narrow interpretation - focused on physical manifestations of state power - obscures the deeper political and discursive processes that underpin securitization. As noted by Barry Buzan, Ole Wæver, and Jaap de Wilde in Security: A New Framework for Analysis (1998), securitization is not merely about the use of force but about "the process through which state actors transform subjects into matters of 'security' to enable extraordinary measures.[11]" In civic space contexts, this means that governments frame activism, digital expression, or civil society operations as existential threats to national stability, thereby legitimizing surveillance, restrictive laws, and emergency powers even before any physical repression occurs.

Scholars such as Rita Abrahamsen and Michael C. Williams (Security Studies, 2011) emphasize that securitization operates through language and policy framing - what they call "the politics of security." When civic actors interpret securitization only as militarization, they miss how legal, bureaucratic, and rhetorical mechanisms normalize exceptional governance. For instance, anti-terrorism and cybercrime laws often precede overt police action, embedding security logic into everyday regulation of civic life.

8 Human Rights Watch. (2024). World Report 2024. New York: Human Rights Watch.
9 CIVICUS. (2024). State of Civic Space Report 2024. Johannesburg: CIVICUS
10 Human Rights Watch. (2024). World Report 2024: Kenya Chapter. New York: Human Rights Watch.
11 Buzan, B., Wæver, O., & de Wilde, J. (1998). Security: A New Framework for Analysis. Boulder: Lynne Rienner Publishers.

Conceptualizing the Securitization of Civic Space

Framing civic activities as security threats

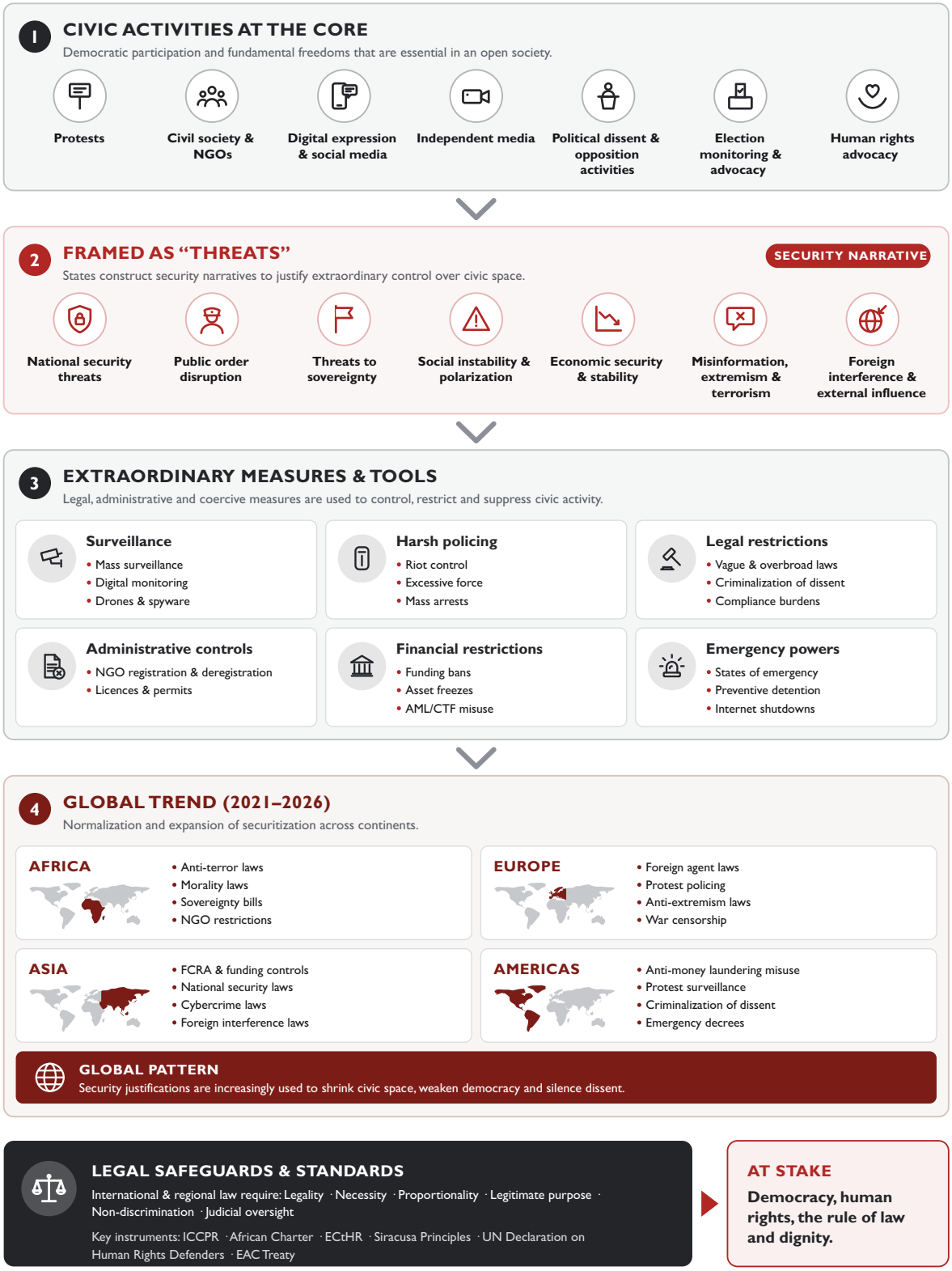


Figure 1: Pictorial presentation of Securitization of Civic Space

This conceptual confusion has limited advocacy strategies, as many organizations respond to visible coercion rather than challenging the underlying narratives that justify it. As Abrahamsen and Williams argue, "security is not simply a condition but a practice - one that constructs threats and authorizes responses.[12]"

12 Abrahamsen, Rita, and Michael C. Williams. "Security Studies and the Politics of Securitization." Security Studies 20, no. 3 (2011): 316–344.

During the period of analysis, governments across the world increasingly relied on anti-terrorism laws, anti-money laundering regulations, cybercrime legislation, emergency powers, and public order frameworks to regulate civic participation and suppress dissent. Although international and regional legal instruments recognize the legitimacy of national security and public order concerns, they simultaneously impose strict safeguards intended to prevent abuse of state power and protect democratic freedoms. Consequently, the relationship between legal security frameworks and civic freedoms has become one of the most contested issues within contemporary constitutionalism and human rights law.[13]

2.2.2 International and Regional Legal Instruments and Their Nexus with the Securitization of Civic Space

At the international level, the International Covenant on Civil and Political Rights (ICCPR) remains the principal legal instrument governing the protection of civic freedoms and permissible state limitations. Articles 19, 21, and 22 guarantee freedoms of expression, peaceful assembly, and association respectively, while Article 25 protects participation in public affairs. However, these rights are not absolute. States may impose restrictions where necessary for national security, public order, public health, or protection of the rights of others. Nevertheless, international law requires that such restrictions satisfy the principles of legality, necessity, proportionality, and legitimate purpose. The United Nations Human Rights Committee has repeatedly emphasized that national security cannot be invoked to suppress peaceful dissent, political opposition, human rights advocacy, or criticism of government institutions.[14]

The ICCPR has become central in contemporary debates regarding the securitization of civic space because many states increasingly rely on broad interpretations of national security to justify restrictions on civil society organizations, journalists, protesters, and online activists. Counterterrorism frameworks adopted after the September 11 attacks and subsequent global security crises significantly expanded executive powers relating to surveillance, detention, financial monitoring, and regulation of civic actors. Human rights bodies have consistently warned that vague definitions of terrorism, extremism, and foreign interference risk criminalizing legitimate civic engagement and democratic participation. Consequently, international human rights law seeks to balance legitimate state security obligations with protection of democratic freedoms and constitutional accountability.[15]

The Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR provide important interpretive guidance concerning restrictions on civic freedoms during national emergencies and security crises. Adopted in 1984 by the United Nations Economic and Social Council, the Siracusa Principles emphasize that national security limitations must not be used as pretexts for suppressing opposition, silencing criticism, or weakening civil society. The Principles require that all restrictive measures remain strictly necessary, proportionate, non-discriminatory, and subject to judicial oversight. Importantly, they caution against indefinite emergency powers and excessive executive discretion, both of which have increasingly characterized securitization trends globally during the period of analysis.[16]

The United Nations Declaration on Human Rights Defenders, adopted in 1998, further reinforces protections for civic actors operating within democratic societies. The Declaration affirms the right of individuals and organizations to promote human rights, access funding, engage in peaceful advocacy, and participate in public affairs without intimidation or retaliation. However, contemporary securitization trends have increasingly undermined these protections through the enactment of foreign agent laws, anti-money laundering regulations, NGO restrictions, and cybercrime legislation targeting human rights defenders and civic organizations. The growing criminalization of international cooperation and foreign-funded advocacy has therefore generated significant tension between sovereignty-based security narratives and international human rights obligations.[17]

At the African regional level, the African Charter on Human and Peoples' Rights provides the foundational framework for protection of civic space across the continent. Articles 9, 10, and 11 protect freedoms of expression, association, and assembly respectively, while Article 13 guarantees participation in public affairs. Unlike some international instruments, the African Charter places strong emphasis on collective rights, democratic participation, and the relationship between governance and human dignity. The African Commission on Human and Peoples' Rights has repeatedly affirmed that restrictions on civic freedoms must remain consistent with democratic principles and cannot be justified solely on broad claims of national security or public morality.[18]

13 United Nations Human Rights Committee. (2011). General Comment No. 34 on Article 19: Freedoms of Opinion and Expression.
14 United Nations Human Rights Committee. (2011). General Comment No. 34 on Article 19: Freedoms of Opinion and Expression.
15 Office of the United Nations High Commissioner for Human Rights (OHCHR). (2022). Counterterrorism and Human Rights.
16 United Nations Economic and Social Council. (1984). Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR.
17 Front Line Defenders. (2024). Global Analysis on Human Rights Defenders.
18 African Commission on Human and Peoples' Rights. (2022). Guidelines on Freedom of Association and Assembly in Africa.

The African Union's legal framework increasingly intersects with securitization debates due to the continent's growing reliance on counterterrorism legislation and emergency governance frameworks. The OAU Convention on Prevention and Combating of Terrorism and the AU Plan of Action on the Prevention and Combating of Terrorism recognize the obligation of states to address terrorism and violent extremism. However, human rights observers have raised concerns that several African states increasingly misuse counterterrorism laws to suppress political opposition, journalists, LGBTQ+ advocacy groups, and civil society organizations. Countries such as Ethiopia, Uganda, Egypt, and Tanzania increasingly invoke national security, anti-terrorism, and sovereignty narratives to justify restrictions on civic space and democratic participation.[19]

The African Commission's Guidelines on Freedom of Association and Assembly in Africa further clarify that national security and public order restrictions must not be applied arbitrarily or discriminatorily. The Guidelines specifically recognize that access to funding, including foreign funding, forms part of the protected right to freedom of association. Consequently, excessive NGO regulation, arbitrary deregistration, and financial restrictions targeting civil society organizations may violate the African Charter. This has become particularly relevant in the context of growing African sovereignty-based legislation aimed at regulating foreign-funded NGOs and advocacy organizations.[20]

Within the East African region, the East African Community (EAC) legal framework also intersects significantly with civic space securitization. The Treaty for the Establishment of the East African Community commits partner states to principles of good governance, democracy, rule of law, accountability, and protection of human rights under Articles 6(d) and 7(2). These provisions establish normative obligations requiring member states to respect civic freedoms and democratic participation while addressing security concerns within the region.

However, several EAC member states increasingly adopted securitization measures during the period of analysis. Uganda enacted the Anti-Homosexuality Act, 2023 and proposed the Protection of Sovereignty Bill, 2026; Tanzania maintained restrictive media and cybercrime frameworks; and Kenya increasingly relied on anti-terrorism and cybercrime laws during protests and digital activism. Critics argued that these developments reflected growing regional normalization of security-centered governance approaches restricting civic participation and dissent.[21]

The East African Court of Justice (EACJ) has increasingly emerged as an important judicial forum for contesting securitization measures affecting civic space. In *Burundian Journalists Union v Attorney General of Burundi (Reference No. 7 of 2013)*, the EACJ held that restrictive media laws violated EAC Treaty principles relating to democracy and rule of law. Similarly, in *Media Council of Tanzania & Others v Attorney General of Tanzania (Reference No. 2 of 2017)*[22], the Court found provisions of Tanzania's Media Services Act inconsistent with EAC Treaty obligations concerning press freedom and democratic governance. These cases demonstrate the growing role of regional courts in reviewing national security and public order measures that restrict civic freedoms within the East African region.[23]

The nexus between securitization and legal instruments therefore reflects an ongoing tension between state sovereignty, security governance, and constitutional democracy. While international and regional frameworks recognize legitimate state responsibilities concerning national security and public order, they simultaneously establish safeguards intended to prevent abuse of power and protect civic participation. Nevertheless, during the period of analysis, governments increasingly invoked terrorism, sovereignty, morality, misinformation, and public order narratives to justify restrictive laws targeting civil society organizations, journalists, activists, and political opposition. Consequently, courts, regional institutions, and human rights bodies continue to play critical roles in determining whether securitization measures remain compatible with democratic governance and international human rights obligations.

2.2.3 Regional and Global Trends in the Securitization of Civic Space

2.2.3.1 Introduction

During the period of analysis, the securitization of civic space emerged as a defining feature of governance across democratic and authoritarian states alike. Governments increasingly framed protests, civil society advocacy, digital activism, election monitoring, whistleblowing, and human rights mobilization as threats to national security, sovereignty, public order, or cultural stability. This trend manifested through the

19 Amnesty International. (2023). The State of Human Rights in Africa 2023.
20 International Center for Not-for-Profit Law (ICNL). (2024). Civic Freedom Monitor: Africa Regional Trends.
21 CIVICUS Monitor. (2025). Global Trends in Civic Space Restrictions.
22 East African Court of Justice. Media Council of Tanzania & Others v Attorney General of Tanzania (Reference No. 2 of 2017).
23 East African Court of Justice. Burundian Journalists Union v Attorney General of Burundi (Reference No. 7 of 2013)

enactment and enforcement of anti-terrorism laws, anti-money laundering frameworks, cybercrime legislation, emergency powers, foreign agent laws, and restrictive public order regulations. Across multiple jurisdictions, institutions traditionally associated with security, intelligence, financial regulation, taxation, and telecommunications oversight increasingly became instruments for monitoring, restricting, and suppressing civic participation and dissent.[24]

The securitization trend accelerated significantly in the aftermath of the COVID-19 pandemic, which normalized emergency governance, digital surveillance, and executive control over public assembly and movement. Governments across Africa, Europe, Asia, and the Americas retained or expanded exceptional powers initially justified on public health grounds and subsequently repurposed them to regulate civic activity and political dissent. The expansion of digital civic engagement further intensified state securitization efforts, with online activism increasingly characterized as misinformation, cybercrime, digital extremism, or threats to national cohesion. Consequently, security-centered governance increasingly displaced rights-based democratic approaches to civic participation.[25]

2.2.3.2 Asia

a) India: Foreign Contribution Regulation Act (FCRA) and the Financial Securitization of Civic Space

India witnessed an intensified securitization of civic space through the expanded enforcement of the Foreign Contribution Regulation Act (FCRA), anti-money laundering frameworks, and financial compliance regulations targeting civil society organizations. Indian authorities increasingly framed foreign-funded non-governmental organizations (NGOs), human rights defenders, environmental movements, religious charities, and minority rights groups as potential threats to national sovereignty, economic security, and public order. Government officials argued that foreign funding mechanisms were being used to influence domestic politics, obstruct economic development projects, promote religious conversions, and undermine India's constitutional institutions. Consequently, financial regulation became a central mechanism through which the state exercised control over civic actors and politically sensitive advocacy organizations.[26]

The securitization framework was primarily operationalized through amendments to the FCRA introduced in 2020 and aggressively implemented during the period of analysis. The amendments imposed stricter conditions on receipt and utilization of foreign funding by civil society organizations. Among the most controversial changes were restrictions prohibiting sub-granting of foreign funds to smaller organizations, mandatory routing of foreign donations through designated accounts at the State Bank of India in New Delhi, expanded governmental powers to suspend NGO registrations, and increased compliance obligations concerning financial reporting and administrative expenditures. The government justified these measures as necessary to enhance transparency, prevent money laundering, combat terrorism financing, and protect national security interests.[27]

The implementation of the FCRA significantly altered the operational environment for civil society organizations in India. Thousands of NGOs reportedly lost their FCRA licenses between 2021 and 2025 due to alleged non-compliance with registration and reporting obligations. Organizations working on human rights, environmental justice, minority protections, labor rights, and governance accountability were disproportionately affected by license cancellations, account freezes, and financial investigations. Critics argued that enforcement patterns demonstrated selective targeting of organizations perceived to challenge government policies or engage in politically sensitive advocacy. Human rights organizations further contended that the regulatory framework created a chilling effect on civil society participation and weakened grassroots democratic engagement.[28]

The financial securitization of civic space was reinforced through the activities of institutions such as the Ministry of Home Affairs, the Enforcement Directorate, the Financial Intelligence Unit, and the Central Bureau of Investigation (CBI). These institutions increasingly exercised expansive investigative and regulatory powers over NGOs and advocacy groups receiving foreign funding. Authorities frequently conducted raids, financial audits, forensic investigations, and compliance inspections targeting organizations accused of violating FCRA provisions or engaging in activities deemed prejudicial to national interests. Critics argued that such investigations were often politically motivated and aimed at

24 CIVICUS Monitor. (2024). People Power Under Attack: Global Trends in Civic Space Restrictions
25 Freedom House. (2024). Freedom in the World 2024.
26 CIVICUS Monitor. (2024). India: Civic Space Restrictions Intensify.
27 International Center for Not-for-Profit Law (ICNL). (2024). Civic Freedom Monitor: India.
28 Amnesty International. (2023). India: Human Rights Under Threat Through Financial Restrictions.

disrupting civic activism rather than addressing legitimate financial crimes.[29]

Environmental and climate justice organizations became particularly vulnerable to securitization narratives linking foreign funding to economic sabotage and obstruction of national development projects. Authorities accused several environmental NGOs of using foreign contributions to delay infrastructure initiatives, energy projects, and industrial development through litigation and advocacy campaigns. The government increasingly portrayed environmental activism as incompatible with India's developmental priorities and economic growth agenda. Human rights observers argued that such narratives blurred the line between legitimate policy advocacy and threats to economic security, thereby legitimizing restrictive state intervention against environmental defenders.[30]

Religious and minority rights organizations similarly faced heightened scrutiny under the FCRA framework. Christian charities, Muslim advocacy organizations, and rights groups working with marginalized communities reported increased regulatory pressure, account suspensions, and compliance investigations. Critics argued that the securitization discourse increasingly linked foreign funding with religious conversion, separatism, and anti-national activities. International observers raised concerns that the selective enforcement of financial regulations disproportionately affected organizations associated with minority communities and dissenting political perspectives, thereby undermining constitutional guarantees relating to equality and freedom of association.[31]

One of the most prominent organizations affected during this period was Amnesty International India. In 2020, Indian authorities froze Amnesty International India's bank accounts following investigations into alleged FCRA violations, effectively forcing the organization to suspend operations in the country. The Enforcement Directorate accused the organization of circumventing foreign funding regulations through commercial channels, while Amnesty International argued that the action constituted retaliation for its human rights reporting on issues such as Kashmir, communal violence, and police abuses. The case became emblematic of broader concerns regarding the weaponization of financial regulation to suppress human rights advocacy and independent civic oversight.[32]

Critics argued that India's FCRA regime violated obligations under the International Covenant on Civil and Political Rights, particularly protections relating to freedom of association and participation in public affairs under Articles 22 and 25. United Nations Special Rapporteurs repeatedly expressed concern that excessive restrictions on access to foreign funding undermined the ability of civil society organizations to operate independently and participate effectively in democratic governance. International human rights bodies emphasized that access to funding constitutes an integral component of the right to freedom of association and that restrictions on foreign funding must satisfy principles of legality, necessity, and proportionality (OHCHR, 2022).

The constitutionality and scope of the FCRA framework came under judicial scrutiny in *Indian Social Action Forum (INSAF) v Union of India (2020) 10 SCC 553*. The petitioners challenged provisions of the FCRA that prohibited organizations receiving foreign funding from engaging in activities deemed "political in nature." Civil society groups argued that the law imposed vague and overly broad restrictions capable of criminalizing legitimate advocacy, public education, and policy engagement activities. Petitioners further contended that the provisions violated constitutional protections relating to freedom of speech, association, and democratic participation guaranteed under Articles 19(1)(a) and 19(1)(c) of the Constitution of India.[33]

In its judgment, the Supreme Court of India upheld significant portions of the FCRA framework while introducing important interpretive limitations concerning legitimate advocacy activities. The Court held that the government possessed legitimate authority to regulate foreign funding in the interests of national sovereignty and democratic integrity. However, the Court emphasized that organizations engaged in legitimate public causes, policy critique, academic discussion, trade union activity, or peaceful advocacy could not automatically be classified as engaging in prohibited political activity merely because they sought social or political change. The Court cautioned against overly expansive interpretations of "political activities" that would suppress legitimate civil society participation and democratic discourse.

Although the judgment provided limited safeguards for advocacy organizations, critics argued that it ultimately reinforced the state's broad discretionary powers to regulate foreign-funded civic actors. Subsequent enforcement patterns demonstrated continued reliance on financial regulation, anti-money

29 Front Line Defenders. (2024). India: Crackdown on Human Rights Organisations Through Financial Regulation.

30 Business & Human Rights Resource Centre. (2023). India: Environmental Defenders and Foreign Funding Restrictions.

31 United States Commission on International Religious Freedom (USCIRF). (2024). India Country Update.

32 Amnesty International, 2023

33 Supreme Court Cases. (2020). Indian Social Action Forum (INSAF) v Union of India, (2020) 10 SCC 553

laundering investigations, and compliance mechanisms to constrain civil society activity. Consequently, the FCRA regime became one of the clearest examples globally of how financial governance and national security narratives can be integrated into broader securitization strategies targeting civic space and democratic participation.[34]

India's experience reflects a wider global trend in which governments increasingly use financial regulation, anti-money laundering frameworks, and sovereignty narratives to regulate civil society organizations and restrict external support for human rights advocacy. Similar patterns emerged in Russia, Egypt, Ethiopia, and Nicaragua, where foreign-funded organizations increasingly became subjects of national security discourse and financial surveillance. The Indian case therefore illustrates how democratic states can institutionalize sophisticated forms of civic space securitization through ostensibly lawful regulatory frameworks while maintaining formal constitutional and electoral legitimacy.

b) Japan: Surveillance Trends

Japan is generally regarded as having a relatively open civic space, with strong protections for freedom of expression, association, and peaceful assembly. In 2024, the global civic space monitor CIVICUS upgraded Japan's civic space rating from "narrowed" to "open," citing improvements in the ability of civil society organizations and peaceful protesters to operate without significant restrictions.[35] However, between 2021 and 2026, concerns emerged regarding the expansion of surveillance technologies, national security legislation, and data collection practices that could have longer-term implications for privacy, freedom of expression, and democratic participation.

One of the most significant developments during this period was the growing use of facial recognition technology (FRT) in public and private spaces. Japan's Personal Information Protection Commission (PPC) issued detailed guidance in 2023 addressing the increasing deployment of facial recognition systems in airports, train stations, commercial facilities, and other public spaces. The guidance acknowledged that facial recognition technologies create unique privacy risks because biometric data can be used to track individuals over extended periods and across multiple locations. The PPC emphasized the need for transparency, purpose limitation, notification to affected individuals, restrictions on data retention, and safeguards against misuse. The issuance of these guidelines reflected growing public concerns about the potential for mass surveillance and the collection of personal data without meaningful consent.[36]

While these systems have largely been justified on grounds of crime prevention, security, and public safety, civil society organizations have warned that expanding biometric surveillance could have a chilling effect on citizens' willingness to participate in protests, political gatherings, and other forms of civic engagement if individuals fear being identified and tracked.

A second emerging trend has been the expansion of national security-related information controls. In 2024, Japan enacted legislation establishing a security clearance system for access to designated economic security information. The framework allows the government to classify certain information relating to critical infrastructure, cyber threats, supply chains, and economic security, while requiring background assessments of individuals seeking access to such information.

Although the legislation was introduced primarily to strengthen economic security and align Japan with security frameworks adopted by other advanced democracies, civil society organizations raised concerns regarding the scope of government monitoring and the potential impact on privacy, employment rights, and access to information. Questions were also raised about the breadth of information that could be classified and the potential consequences for investigative journalism and public accountability.

By 2025 and 2026, concerns had intensified regarding proposed security legislation, including discussions around anti-espionage measures and foreign influence regulation. Civil society organizations warned that some proposals could expand state monitoring powers and create risks for journalists, researchers, civil society organizations, and advocacy groups engaged in international collaboration. CIVICUS noted that several proposed laws had generated debate due to their potential implications for freedom of expression, access to information, and civic participation.[37]

Even before 2021, Kenya was already in talks with Japan Government on this technology. This led to the launch of Facial Recognition system as part of the upgrade on the Integrated Command and Control System (ICCS) earlier in 2018 by the National Police Service (NPS).

34 CIVICUS Monitor. (2024). India: Civic Space Restrictions Intensify.

35 Benoza, K. (2024). Japan's civic space status upgraded to highest tier. The Japan Times. Available at: The Japan Times – Civic Space Status Upgrade

36 Personal Information Protection Commission (PPC), Japan. (2023). Guidelines on the Use of Facial Recognition Technology.

37 CIVICUS Monitor. (2024). Japan: The CIVICUS Monitor upgrades Japan's civic space to "Open" as civil society operates freely.

The technology was installed in partnership with a Japanese electronics company.[38] Originally justified as tools for counterterrorism, surveillance technologies, were increasingly linked to political dissent and protest management after the 2024 Finance Bill demonstrations. Rights groups report that these technologies were deployed in Nairobi and other urban centers to monitor movements, identify participants, and facilitate arrests and intimidation.[39]

2.2.3.3 Africa

a) Uganda: Sovereignty-Based Securitization

Uganda's proposed Protection of Sovereignty Act, 2026 further illustrates the growing trend of financial and sovereignty-based securitization of civic space in Africa. Emerging shortly after the enactment of the Anti-Homosexuality Act, 2023, the Act was presented by government officials as a necessary instrument for protecting Uganda's political independence, cultural identity, and national sovereignty from alleged foreign interference.[40] Authorities argued that foreign governments, international NGOs, donor agencies, and externally funded civil society organizations were increasingly influencing domestic governance processes, electoral politics, human rights advocacy, and public opinion in ways deemed inconsistent with Uganda's national interests. Similar to India's Foreign Contribution Regulation Act (FCRA), the Ugandan proposal sought to expand state oversight over foreign-funded organizations, enhance financial disclosure obligations, and criminalize activities considered detrimental to national sovereignty or public order.[41]

The securitization logic underpinning the Act framed civil society organizations, governance activists, human rights defenders, and donor-funded advocacy groups as potential conduits for foreign political influence and regime destabilization. Public statements by political leaders suggested that external actors were allegedly using civic organizations to undermine state institutions, promote "foreign values," sponsor political unrest, and influence domestic policymaking. The proposed framework reportedly contemplated enhanced registration requirements, tighter regulation of foreign grants, expanded investigatory powers for state agencies, and criminal sanctions against organizations or individuals accused of acting on behalf of foreign interests without authorization. Institutions such as the NGO Bureau, Financial Intelligence Authority, Internal Security Organisation (ISO), and Uganda Police Force were expected to play central enforcement roles under the proposed regime.[42]

Critics argued that the Protection of Sovereignty Act reflected broader regional patterns in which governments increasingly invoke sovereignty, anti-imperialism, morality, and national security narratives to justify restrictions on civic space and democratic participation. Human rights organizations warned that the Act risked legitimizing excessive state control over civil society organizations, weakening independent advocacy, and criminalizing legitimate international cooperation protected under international human rights law. Concerns were particularly raised regarding potential violations of the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, both of which protect freedoms of association, expression, participation in public affairs, and access to resources for lawful civic activity. International observers further noted similarities between Uganda's proposed framework and comparable "foreign agent" or sovereignty laws previously adopted in Russia, India, Nicaragua, and Hungary, where financial regulation and national security discourse were increasingly weaponized against civil society organizations and dissenting voices.[43]

Although the Act had not yet been subjected to judicial review in 2026, its introduction generated significant constitutional debate within Uganda's legal and civic sectors. Civil society organizations argued that the proposed legislation would likely face constitutional challenges on grounds of vagueness, disproportionality, and infringement of freedoms guaranteed under the Constitution of Uganda, including freedom of association, expression, and political participation. Legal scholars similarly cautioned that broad definitions of "foreign influence" and "threats to sovereignty" could create expansive discretionary powers susceptible to political misuse against opposition actors, journalists, LGBTQ+ organizations, and governance-focused NGOs.

38 Kenyans (2018) Police Launch Facial Recognition System to Nab Criminals. Available at https://www.kenyans.co.ke/news/33249-police-launch-facial-recognition-system-nab-criminals

39 See Geeska (2025) https://www.geeska.com/en/kenyas-crackdown-goes-digital-amnesty-warns

40 Daily Monitor. (2026). Uganda's Protection of Sovereignty Bill Sparks Debate.

41 CIVICUS Monitor. (2026). Uganda: Proposed Sovereignty Legislation Raises Civic Space Concerns.

42 Human Rights Watch. (2026). Uganda: Expanding Restrictions on Civil Society.

43 International Center for Not-for-Profit Law (ICNL). (2026). Civic Freedom Monitor: Uganda.

Consequently, the Protection of Sovereignty Bill became emblematic of the broader shift toward sovereignty-centered securitization frameworks increasingly emerging across Africa and globally as governments seek to regulate external civic engagement and constrain independent democratic oversight.

b) Ethiopia: Counterterrorism and Conflict-Related Securitization

Ethiopia experienced one of the most extensive securitization processes in Africa, largely driven by the armed conflict between the Federal Government and the Tigray People's Liberation Front (TPLF). Civic space restrictions intensified significantly during and after the Tigray conflict, with authorities increasingly framing journalists, activists, humanitarian actors, opposition groups, and ethnic mobilization movements as threats to national unity, constitutional order, and state security. The government justified these measures as necessary responses to terrorism, armed rebellion, misinformation, and foreign interference. However, human rights organizations and international observers argued that the conflict environment enabled the expansion of executive power and the normalization of exceptional security measures that severely undermined civic freedoms and democratic participation.[44]

The Ethiopian government relied extensively on the Prevention and Suppression of Terrorism Proclamation and nationwide State of Emergency regulations to regulate civic activity and suppress dissent during this period. The TPLF was formally designated as a terrorist organization by the Ethiopian Parliament in 2021, thereby broadening the legal basis for terrorism-related prosecutions and security operations. Under the state of emergency declared in November 2021, authorities acquired sweeping powers to arrest individuals without warrants, impose curfews, conduct searches without judicial authorization, restrict communication networks, and detain persons suspected of supporting terrorist organizations. The emergency framework also enabled the establishment of command posts with extensive policing and military powers across various regions of the country.[45]

The securitization of civic space manifested through mass arrests, arbitrary detention, censorship, internet shutdowns, media restrictions, and heightened surveillance of journalists and civil society organizations. Ethiopian authorities repeatedly suspended media houses, detained journalists covering the conflict, and restricted humanitarian reporting relating to alleged atrocities in Tigray, Amhara, and Oromia regions. Institutions such as the Ethiopian Federal Police, National Intelligence and Security Service (NISS), Ethiopian National Defence Force (ENDF), and regional security structures increasingly became central instruments for monitoring and suppressing perceived threats to national security. Human rights organizations documented cases in which journalists and activists were detained for alleged dissemination of "false information," support for terrorism, or incitement of ethnic violence.[46]

The securitization measures also disproportionately affected ethnic minorities and political opposition actors. Thousands of ethnic Tigrayans were reportedly subjected to arbitrary detention, profiling, and movement restrictions during the conflict period. Human Rights Watch and Amnesty International documented allegations of enforced disappearances, torture, prolonged detention without trial, and denial of legal representation. Many detainees were accused of supporting terrorist activities solely on the basis of ethnicity, political affiliation, or perceived association with opposition groups. These developments generated widespread concern regarding the use of counterterrorism frameworks to legitimize ethnic profiling and suppress political dissent.[47]

International observers criticized Ethiopia for violating obligations under the International Covenant on Civil and Political Rights, particularly protections relating to due process, liberty, fair trial rights, and freedom of expression. Article 9 of the ICCPR prohibits arbitrary arrest and detention, while Article 19 protects freedom of expression subject only to lawful, necessary, and proportionate limitations. Critics argued that Ethiopia's emergency measures frequently exceeded these standards, particularly in relation to prolonged detention without charge, suppression of independent media, and restrictions on humanitarian access. The United Nations High Commissioner for Human Rights similarly raised concerns regarding arbitrary arrests, hate speech regulation, and restrictions on independent reporting during the conflict.[48]

44 Human Rights Watch. (2024). World Report 2024: Ethiopia. Also see Amnesty International. (2023). Ethiopia: Repression Under the State of Emergency.

45 Reuters. (2021). Ethiopia declares state of emergency as Tigray conflict intensifies.

46 Committee to Protect Journalists. (2022). Ethiopia Continues Arrests of Journalists Covering Conflict.

47 Human Rights Watch. (2024). World Report 2024: Ethiopia.

48 Office of the United Nations High Commissioner for Human Rights (OHCHR). (2022). Ethiopia: UN Experts Raise Alarm Over Mass Arrests and Detentions.

Regional human rights bodies also expressed concern regarding the shrinking civic space environment in Ethiopia. The African Commission on Human and Peoples' Rights repeatedly called upon Ethiopian authorities to uphold protections guaranteed under the African Charter on Human and Peoples' Rights, including freedoms of expression, association, assembly, and protection from arbitrary detention. In several resolutions and public statements, the Commission emphasized that counterterrorism measures and emergency powers must remain consistent with international human rights obligations and should not be used to suppress lawful dissent or independent journalism.[49]

One of the most prominent cases illustrating Ethiopia's conflict-related securitization was *Eskinder Nega v Federal Democratic Republic of Ethiopia (Federal High Court of Ethiopia, ongoing)*. Eskinder Nega, a prominent journalist, opposition figure, and former political prisoner, had long been associated with criticism of authoritarian governance and restrictions on freedom of expression in Ethiopia. Following renewed ethnic and political tensions in the Amhara region, Ethiopian authorities accused Eskinder Nega and several associates of supporting armed mobilization, inciting violence, and participating in activities threatening constitutional order and national security. Prosecutors relied on anti-terrorism and national security provisions to justify his detention and prosecution.[50]

The case attracted significant international attention because of Eskinder Nega's longstanding role as a journalist and democracy advocate. Human rights organizations argued that the prosecution reflected broader patterns of criminalizing political dissent under national security frameworks. Amnesty International and the Committee to Protect Journalists contended that the charges were politically motivated and designed to suppress independent political organizing and critical journalism. Although some terrorism-related allegations were revised or reduced during subsequent proceedings, the Federal High Court continued hearing aspects of the case as of 2026, with no final judgment delivered. Consequently, the matter remained ongoing and symbolized the broader tensions between state security imperatives and protection of civic freedoms in Ethiopia.[51]

The judiciary's role during this period remained highly contested. While Ethiopian courts occasionally ordered release of detainees or reviewed aspects of emergency detention, critics argued that the judiciary generally adopted a deferential approach toward executive claims of national security. Human rights observers contended that prolonged pretrial detention, limited judicial oversight of security operations, and delays in adjudicating politically sensitive cases undermined public confidence in judicial independence. At the same time, the government maintained that extraordinary measures were necessary to preserve constitutional order and prevent national fragmentation during armed conflict.[52]

Beyond Ethiopia, the conflict-related securitization of civic space reflected a broader continental and global trend in which governments increasingly invoke terrorism, national unity, misinformation, and security threats to justify restrictions on civil liberties during periods of political instability and armed conflict. Similar patterns emerged in Sudan, Egypt, and parts of the Sahel region, where emergency powers and counterterrorism laws increasingly became mechanisms for suppressing opposition, limiting media freedom, and weakening civil society oversight.

Ethiopia's experience therefore illustrates how armed conflict environments can accelerate the normalization of securitized governance and significantly shrink civic and democratic space under the guise of preserving national security and territorial integrity.

2.2.3.4 Europe

a) Russia: Foreign Agents Law and the Securitization of Civic Space

During the period of analysis, Russia emerged as one of the most prominent global examples of the systematic securitization of civic space through legal, administrative, and coercive state mechanisms. Following the deterioration of relations between Russia and Western states, particularly after the invasion of Ukraine in February 2022, Russian authorities increasingly framed civil society organizations, independent journalists, academics, anti-war activists, and foreign-funded organizations as threats to national sovereignty, constitutional order, and national security.[53] The Russian government argued that foreign governments and international organizations were using civil society networks, independent media, and human rights advocacy to destabilize the Russian state and undermine traditional national values.

49 African Commission on Human and Peoples' Rights. (2022). Resolution on the Human Rights Situation in Ethiopia.
50 Reuters. (2022). Ethiopian authorities arrest activist Eskinder Nega.
51 Amnesty International. (2023). Ethiopia: Repression Under the State of Emergency.
52 Freedom House. (2024). Freedom in the World 2024: Ethiopia.
53 Freedom House. (2024). Freedom in the World 2024: Russia.

Consequently, the state adopted an increasingly security-oriented governance approach that blurred the distinction between legitimate civic participation and threats to state security.[54]

Central to this securitization framework was the expansion and aggressive implementation of the Foreign Agents Law. Originally introduced in 2012, the legislation was progressively expanded during the period of analysis through amendments that significantly widened the categories of individuals and organizations capable of being designated as "foreign agents." Under the revised framework, any organization, media outlet, activist, journalist, academic, or individual receiving foreign support or considered to be under "foreign influence" could be classified as a foreign agent regardless of whether they engaged in political activity.

The law imposed extensive reporting obligations, financial disclosure requirements, mandatory auditing procedures, and compulsory public identification using stigmatizing disclaimers in all publications and communications.[55]

The "foreign agent" designation carried profound legal, social, and operational consequences for civic actors. Organizations designated as foreign agents faced heightened administrative burdens, reputational stigmatization, financial restrictions, and exposure to criminal liability for non-compliance. Independent media houses and civil society organizations were required to prominently label all content with disclaimers indicating their foreign agent status, effectively portraying them as instruments of hostile foreign powers. Human rights organizations argued that the terminology deliberately evoked Soviet-era notions of espionage and treason, thereby fostering public hostility toward independent civic actors and delegitimizing dissent.[56]

The securitization of civic space further intensified after the Russian invasion of Ukraine in 2022. Authorities enacted sweeping wartime censorship laws criminalizing dissemination of "false information" regarding the Russian military and prohibiting criticism of military operations. Amendments to the Criminal Code imposed severe penalties, including imprisonment of up to fifteen years, for individuals accused of "discrediting" the armed forces or spreading information contradicting official state narratives concerning the war in Ukraine. Anti-extremism legislation and national security provisions were similarly expanded to suppress anti-war protests, online criticism, and independent reporting on the conflict.

State institutions such as Roskomnadzor, the Federal Security Service (FSB), the Ministry of Justice, and the Prosecutor General's Office increasingly became central instruments in the enforcement of securitization measures. Roskomnadzor was widely used to block independent media platforms, censor online content, and restrict access to foreign news outlets and social media platforms. The Ministry of Justice maintained and expanded official registries of foreign agents, while the FSB conducted surveillance, interrogations, raids, and criminal investigations targeting journalists, opposition figures, and civil society organizations accused of undermining national security. These institutions collectively facilitated the systematic shrinking of independent civic and political space in Russia.[57]

The securitization process disproportionately affected anti-war activists, journalists, academics, and human rights defenders. Thousands of protestors opposing the Ukraine war were arrested under public order and anti-extremism laws, while independent media organizations were shut down or forced into exile. Human rights organizations documented widespread use of arbitrary detention, intimidation, politically motivated prosecutions, and internet censorship. The Russian authorities also expanded restrictions on international human rights organizations, leading to the closure or forced withdrawal of several foreign NGOs and international media entities from the country.[58]

The legality of Russia's foreign agents framework was challenged before the *European Court of Human Rights in Ecodefence and Others v Russia [2022] ECHR 178*. The case consolidated complaints from multiple Russian civil society organizations, human rights groups, and media entities designated as foreign agents under Russian law. The applicants argued that the legislation violated rights protected under Articles 10 and 11 of the European Convention on Human Rights relating to freedom of expression and freedom of association. The applicants further contended that the law imposed discriminatory burdens, stigmatized civic organizations, and created disproportionate restrictions inconsistent with democratic governance principles.[59]

54 Human Rights Watch. (2024). World Report 2024: Russia.

55 Council of Europe Parliamentary Assembly. (2023). Consequences of the Russian Federation's Withdrawal from the Council of Europe.

56 Amnesty International. (2023). Russia: Repression of Anti-War Activism and Independent Media.

57 Freedom House (2024)

58 CIVICUS Monitor. (2024). Russia: Civic Space in Rapid Decline.

59 European Court of Human Rights. Ecodefence and Others v Russia [2022] ECHR 178 Available at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-217751%22]}

In its judgment delivered in June 2022, the European Court of Human Rights held unanimously that Russia's Foreign Agents Law violated Articles 10 and 11 of the European Convention on Human Rights. The Court found that the legislation imposed excessive reporting obligations, severe sanctions, intrusive inspections, and stigmatizing labelling requirements that created a chilling effect on civil society participation and independent journalism. Importantly, the Court rejected the Russian government's argument that the measures were necessary for national security and transparency, holding instead that the restrictions were neither necessary nor proportionate in a democratic society. The Court emphasized that the "foreign agent" label carried strong negative connotations associated with espionage and treason and was likely to discredit and marginalize affected organizations in the eyes of the public. Consequently, the Court ordered Russia to pay compensation and legal costs to the applicants.

Despite the judgment, Russian authorities continued implementing and expanding the foreign agents regime. Following Russia's withdrawal from the Council of Europe in 2022, the practical enforceability of ECtHR judgments within Russia significantly weakened. The Russian Constitutional Court and federal authorities increasingly asserted the supremacy of domestic constitutional interpretation over external judicial oversight, thereby limiting the domestic impact of adverse European human rights decisions. As a result, independent organizations, journalists, academics, and activists continued facing designation as foreign agents, administrative penalties, and criminal liability throughout the 2021–2026 period.[60]

The Russian case illustrates how securitization can evolve into a comprehensive governance framework combining national security rhetoric, sovereignty narratives, legal regulation, administrative control, and coercive enforcement against civic actors. By framing independent civic participation and foreign engagement as existential threats to state stability and national identity, Russian authorities institutionalized a system in which civil society, journalism, and dissent became increasingly associated with espionage, extremism, and foreign interference. The Russian experience therefore represents one of the clearest contemporary examples of how legal securitization mechanisms can fundamentally transform democratic governance and shrink civic space under the guise of protecting national sovereignty and security.

b) France: Protest Policing and Public Order Securitization

France experienced intensified securitization of civic space amid widespread pension reform demonstrations, climate activism, labor strikes, and public order protests. The French government increasingly framed certain forms of protest mobilization as threats to economic stability, republican order, public safety, and national security.[61] The securitization discourse became particularly pronounced during the nationwide protests against President Emmanuel Macron's pension reforms in 2023, where authorities characterized segments of the demonstrations as violent, extremist, and economically disruptive. Similar narratives emerged in relation to climate movements, anti-police brutality protests, and pro-Palestinian demonstrations, which were frequently subjected to heightened surveillance and restrictive policing measures.[62]

The French state relied heavily on provisions of the French Internal Security Code, public order legislation, and anti-riot policing frameworks to regulate protests during this period. Authorities invoked powers relating to prevention of public disorder, national security, anti-terrorism preparedness, and crowd control to justify extensive deployment of riot police units and surveillance technologies. The Ministry of the Interior increasingly adopted security-centered approaches that emphasized deterrence, preventive policing, and intelligence-led monitoring of demonstrations. Human rights organizations argued that these measures reflected a broader normalization of exceptional policing powers initially expanded during the state of emergency period following the 2015 terrorist attacks in France (Council of Europe Commissioner for Human Rights, 2024).

The securitization of public assembly manifested through widespread use of tear gas, rubber bullets, water cannons, preventive detention measures, kettling tactics, and mass arrests during demonstrations. Riot police units, particularly the Compagnies Républicaines de Sécurité (CRS) and Brav-M units, were repeatedly deployed against protestors in Paris, Lyon, Marseille, and other urban centers. French authorities also increasingly used administrative restrictions prohibiting demonstrations in certain areas, preventive identity checks, and stop-and-search operations targeting protest organizers and activists.

60 Council of Europe Commissioner for Human Rights. (2023). The Situation of Human Rights in the Russian Federation.

61 Amnesty International. (2023). France: Excessive Use of Force During Pension Reform Protests.

62 Human Rights Watch. (2024). World Report 2024: France.

Human rights observers documented instances where protestors, journalists, and legal observers were injured during crowd control operations, raising concerns regarding excessive use of force and proportionality in policing.

Climate activism became a particularly important site of securitization between 2022 and 2025. Environmental groups engaged in anti-fossil fuel protests, infrastructure blockades, and civil disobedience campaigns increasingly faced aggressive policing measures and legal restrictions. French authorities frequently characterized climate protests as threats to public infrastructure, economic continuity, and public order. In 2023, the French government attempted to dissolve the environmental movement Les Soulèvements de la Terre under powers relating to violent extremism and public disorder, arguing that the organization encouraged sabotage and violent protest tactics.

The dissolution order attracted strong criticism from civil society organizations and generated wider debate regarding the criminalization of environmental activism in democratic societies.[63]

Digital surveillance technologies also became central instruments in France's protest policing framework. Authorities increasingly deployed surveillance drones, facial recognition technologies, aerial monitoring systems, and digital intelligence tools to monitor demonstrations and identify protest participants. The use of drones expanded considerably during pension reform protests and public assembly operations, particularly in Paris and other major cities. Human rights organizations argued that these technologies undermined privacy rights, created chilling effects on freedom of assembly, and normalized mass surveillance practices inconsistent with democratic freedoms protected under the European Convention on Human Rights.[64]

The extensive use of surveillance drones during protests became the subject of major constitutional and administrative litigation in *Ligue des droits de l'Homme v France (Conseil d'État, 2023)*. The applicants, including the Ligue des droits de l'Homme and other civil liberties groups, challenged the legality of drone surveillance deployed by French police authorities during demonstrations and public gatherings.

The applicants argued that the use of drones equipped with cameras constituted disproportionate interference with rights to privacy, freedom of assembly, and freedom of expression protected under the European Convention on Human Rights and French constitutional law. They further contended that the surveillance framework lacked sufficient legal safeguards, transparency mechanisms, and judicial oversight.[65]

In its judgment, the Conseil d'État imposed significant limitations on the use of surveillance drones during protests and public order operations. The Court emphasized that surveillance technologies capable of capturing identifiable images of protest participants interfered with fundamental rights relating to privacy and freedom of assembly. It held that deployment of drones must satisfy principles of legality, necessity, and proportionality, and that authorities were required to establish clear legal bases, operational safeguards, and data protection guarantees before engaging in such surveillance activities. The Court further stressed that generalized or indiscriminate surveillance of demonstrations could create chilling effects on democratic participation and discourage citizens from exercising constitutionally protected civic freedoms.[66]

Although the judgment did not prohibit drone deployment entirely, it significantly constrained executive discretion by requiring stricter safeguards and proportionality assessments. The decision was widely regarded as an important affirmation of privacy protections and civic freedoms within the context of increasingly technologized policing practices. Nevertheless, critics argued that French authorities continued expanding digital surveillance capabilities and public order powers despite judicial interventions, thereby reinforcing broader trends toward securitized governance and preventive policing.

Human rights organizations repeatedly criticized France for disproportionate restrictions on peaceful assembly and excessive use of force during protests. Amnesty International documented numerous incidents involving injuries caused by rubber bullets, arbitrary arrests, intimidation of journalists, and excessive crowd-control tactics during pension reform demonstrations and climate protests. The Council of Europe Commissioner for Human Rights similarly expressed concern regarding the shrinking operational environment for peaceful assembly in France and urged authorities to ensure compliance with European human rights standards governing policing of demonstrations.

63 Reuters. (2023). France moves to dissolve climate activist group after protests.
64 European Digital Rights (EDRi). (2023). Drone Surveillance and Protest Rights in Europe.
65 Conseil d'État. Ligue des droits de l'Homme v France (Conseil d'État, 2023).
66 Conseil d'État. Ligue des droits de l'Homme v France

The French experience illustrates how democratic states increasingly rely on securitization frameworks to manage protest movements and contentious civic mobilization. Although French authorities justified restrictive measures as necessary for maintaining public order and protecting economic stability, critics argued that the growing reliance on preventive policing, digital surveillance, and anti-riot legislation risked normalizing exceptional security practices within ordinary democratic governance. Consequently, France became an important contemporary example of the tensions between security governance, technological surveillance, and protection of civic freedoms within liberal democratic systems.

2.2.4 Visualizing Securitization of Civic Space in Kenya

In Kenya, securitization increasingly manifested using counterterrorism rhetoric, public order laws, anti-cybercrime frameworks, and intelligence operations against protestors, activists, journalists, and civil society organizations. State responses increasingly relied on narratives portraying dissent as foreign-sponsored destabilization, economic sabotage, or incitement to violence. This trend reflected broader post-9/11 global security paradigms where counterterrorism measures expanded state authority over civic and political activity.[67]

2.2.4.1 Criminalization of Dissent through Lawfare in Kenya

Over the past five years, Kenya experienced a significant expansion in the use of criminal and regulatory laws to manage, suppress, and securitize civic dissent. This study demonstrates how authorities increasingly relied on broad legal provisions to prosecute protesters, activists, bloggers, journalists, and human rights defenders under the guise of maintaining public order, national security, cyber regulation, and protection of public institutions. While Kenya remains constitutionally committed to democratic governance under the Constitution of Kenya 2010, the period under review reflects growing concerns regarding the transformation of legal frameworks into instruments of civic repression.

The increasing reliance on criminal law to regulate civic action reflects a broader global phenomenon commonly described as "lawfare" - the strategic use of legal systems and judicial processes to weaken dissent and constrain civic participation.[68] This study identifies five principal legal frameworks most frequently used against protesters and activists during the period of analysis: the Public Order Act, the Penal Code, the Computer Misuse and Cybercrimes Act, national security laws including the Prevention of Terrorism Act, and criminal or civil defamation laws. Collectively, these legal instruments accounted for approximately 1,365 documented prosecutions and enforcement actions targeting dissenting voices during the review period.

This study demonstrates that the cumulative effect of these legal frameworks has been the normalization of criminalization as a governance strategy against dissent. The laws identified were frequently applied selectively, disproportionately, and inconsistently, particularly during politically sensitive periods such as elections, anti-government protests, and tax-related mobilizations. Human rights defenders, journalists, protesters, bloggers, and civil society actors consequently faced increasing exposure to arbitrary arrests, harassment, legal intimidation, financial burdens, and prolonged judicial processes.

The broader implications extend beyond individual prosecutions. The securitization of civic participation through law contributes to a chilling effect on public discourse, democratic participation, investigative journalism, and constitutional accountability. Scholars increasingly warn that such trends undermine democratic resilience by transforming legal institutions into mechanisms of political control rather than guardians of constitutional rights.

a) Public Order Act and the Regulation of Protest

This study identifies the Public Order Act (Cap. 56) as the most frequently used legal framework against civic actors, accounting for approximately 540 documented cases. The law regulates public assemblies, meetings, and processions, requiring prior notification to authorities before demonstrations occur. In practice, however, police frequently treated notification requirements as authorization mechanisms, leading to the dispersal of protests deemed "unauthorized".

Authorities regularly invoked offences such as unlawful assembly, incitement, and riotous behaviour during anti-government protests, election-related demonstrations, and the #RejectFinanceBill2024 mobilizations.

67 International Center for Not-for-Profit Law (ICNL). (2022). Financial Action Task Force Standards and Civic Space. Washington, D.C.: ICNL.
68 Glasius, M. (2022). Authoritarian Practices and Civic Space Restrictions.

KNCHR and Amnesty International documented widespread arrests, use of force, and detention of peaceful protesters during demonstrations in 2023 and 2024, raising concerns regarding violations of Articles 37 and 39 of the Constitution of Kenya, which guarantee freedoms of assembly, demonstration, picketing, and movement.[69]



Figure 2: Lawfare on Civic Space in Kenya

Kenyan courts have repeatedly affirmed that peaceful assembly constitutes a constitutional right rather than a privilege subject to arbitrary police discretion. In *Republic v Inspector General of Police ex parte Kenya Human Rights Commission* [2024] eKLR, the High Court reiterated that notification under the Public Order Act does not amount to a request for permission and that authorities bear a constitutional obligation to facilitate rather than suppress peaceful assemblies. Nevertheless, enforcement patterns during the review period demonstrated persistent tensions between constitutional protections and securitized policing practices.

69 Kenya National Commission on Human Rights (KNCHR). (2024). Annual Human Rights Report.

b) Penal Code

The Penal Code accounted for approximately 310 documented cases targeting protesters and activists. Many of the provisions used against dissenters originate from colonial-era legal frameworks historically designed to suppress political mobilization and anti-colonial resistance.[70] Authorities increasingly relied on offences such as treason, incitement to violence, malicious damage to property, sedition-related provisions, and economic sabotage to prosecute protest organizers and opposition-linked actors during periods of political unrest.

During the 2023 anti-government protests led by opposition coalitions, senior state officials framed demonstrations as threats to economic stability and constitutional order. Protest organizers and participants faced charges linked to destruction of property, unlawful gatherings, and incitement, while political rhetoric increasingly associated protest mobilization with attempts at unconstitutional regime change.[71]

The revival of "economic sabotage" narratives during the Finance Bill protests reflected broader securitization trends in which governments characterize economic disruption arising from protests as threats to national security. Legal scholars have argued that the continued use of vague and overly broad offences within the Penal Code creates opportunities for selective enforcement and politicized prosecutions inconsistent with constitutional guarantees on legality and fair trial rights.[72]

c) Computer Misuse and Cybercrimes Act and Digital Securitization

Digital activism emerged as one of the most heavily securitized civic arenas during the period of analysis. This study identifies the Computer Misuse and Cybercrimes Act as accounting for approximately 270 documented prosecutions and investigations targeting bloggers, online activists, whistleblowers, and social media users. Authorities increasingly used the law to regulate online expression under allegations of false publication, cyber harassment, hate speech, unauthorized access, and misuse of communication platforms.[73]

The rise of decentralized digital mobilization during the #RejectFinanceBill2024 protests significantly intensified state surveillance and cybercrime enforcement. Activists reported summons, arrests, device confiscations, online monitoring, and alleged abductions targeting individuals associated with anti-government campaigns on X (formerly Twitter), TikTok, Instagram, and WhatsApp.[74]

Several important judicial decisions emerged concerning cybercrime prosecutions during this period. In *Republic v David Oaga Mokaya* (Milimani Criminal Court, Criminal Case No. E176 of 2025), a Moi University student charged under the Computer Misuse and Cybercrimes Act for allegedly publishing false information concerning President William Ruto was acquitted after the prosecution failed to prove authorship and publication of the impugned content. Similarly, in *Republic v Rose Njeri* (Milimani Criminal Case No. E312 of 2025), a civic technologist charged under Section 16 of the Act for developing a public participation tool enabling citizens to email Members of Parliament concerning the Finance Bill was acquitted after the court found insufficient legal and factual grounding for the prosecution. These cases reflected growing judicial concern regarding misuse of cybercrime legislation to criminalize legitimate civic participation and online dissent.[75]

Despite these acquittals, Kenyan courts generally allowed continued enforcement of key provisions of the Computer Misuse and Cybercrimes Act pending constitutional challenges. Consequently, the law remained a major instrument through which digital dissent continued to be securitized during the period of analysis.

d) National Security Laws and Counterterrorism Frameworks

National security laws accounted for approximately 150 documented cases targeting activists, bloggers, protesters, and political dissidents during the review period. Authorities increasingly relied on counterterrorism narratives to frame dissent as threats to public safety, constitutional order, and national stability. The Prevention of Terrorism Act and related national security legislation became central tools in surveillance operations, arrests, interrogations, and prolonged detentions.[76]

70 Mutua, M. (2001). Justice under Siege: The Rule of Law and Judicial Subservience in Kenya.
71 Human Rights Watch. (2024). Kenya: Protest Crackdowns and Arbitrary Arrests.
72 International Commission of Jurists Kenya. (2024). Rule of Law and Civic Space in Kenya
73 ARTICLE 19 Eastern Africa. (2024). Freedom of Expression and Protest Rights in Kenya.
74 CIPESA. (2024). State of Internet Freedom in East Africa.
75 Media Council of Kenya. (2025). State of Media Freedom in Kenya.
76 Human Rights Watch. (2025). Counterterrorism and Civic Freedoms in Kenya.

Counterterrorism frameworks were particularly invoked during periods of conflict insecurity, anti-government protests, and crackdowns on alleged banditry operations in conflict-prone regions. Civil society organizations argued that the broad language contained in terrorism legislation allowed authorities to blur distinctions between legitimate civic activism and national security threats.[77]

International human rights bodies have consistently emphasized that national security restrictions on civic freedoms must satisfy the principles of legality, necessity, and proportionality under Article 19 and Article 21 of the ICCPR. However, Kenyan human rights organizations documented numerous instances where anti-terrorism powers were allegedly used disproportionately against critics, protest organizers, and online activists rather than genuine terrorism suspects.[78]

e) Defamation Laws

The final category identified in this study involves criminal and civil defamation laws, accounting for approximately 95 documented cases during the period of analysis. Defamation-related provisions were increasingly used against journalists, bloggers, whistleblowers, and activists accused of damaging the reputation of public officials and institutions. These cases frequently involved allegations of publication of falsehoods, reputational injury, and offensive communication (Media Council of Kenya, 2025).

Although the High Court declared criminal defamation unconstitutional in *Jacqueline Okuta & Another v Attorney General & 2 Others* [2017] eKLR, authorities continued to rely on related provisions under cybercrime legislation and civil defamation claims to intimidate critics and suppress investigative reporting. Human rights organizations argued that the persistence of such prosecutions contributed to self-censorship, particularly among bloggers and independent digital media actors.[79]

2.2.4.2 Weaponization of State Institutions

During the period of analysis, Kenya witnessed an increasingly sophisticated securitization of civic space characterized by the growing weaponization of state institutions against dissenting voices, protesters, bloggers, journalists, activists, human rights defenders, and civil society organizations. This study illustrates how law enforcement agencies, financial regulators, communications authorities, and administrative institutions became central actors in regulating, suppressing, and controlling civic participation. The pattern reflects broader global trends in which governments increasingly rely on legal, financial, digital, and administrative mechanisms to restrict civic freedoms while framing dissent as threats to national security, public order, sovereignty, or economic stability.[80]

The data reflected in this study demonstrates that Kenya's securitization architecture expanded beyond conventional policing to incorporate financial surveillance, digital regulation, tax enforcement, civil society oversight, media regulation, and administrative sanctions.[81] This development mirrors contemporary scholarship on ***"networked authoritarianism,"*** where states utilize multiple institutions simultaneously to shrink civic space while maintaining formal constitutional and democratic structures.[82] The increasing normalization of these measures has generated significant concern regarding compliance with the Constitution of Kenya 2010 and international human rights obligations under the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR).

The trend analysis illustrated in this study demonstrates a steady increase in documented uses of state institutions against civic actors - rising from 1,241 documented incidents in 2021 to 2,974 by 2026. This progression reflects not isolated incidents but rather the institutionalization and normalization of securitized governance practices. The increasing integration of policing, financial regulation, digital governance, administrative compliance, and media control suggests the emergence of a multidimensional civic control architecture.

Importantly, the groups most affected - human rights defenders/activists (51%), journalists (24%), civil society organizations (16%), and bloggers (9%) - are precisely the central actors to democratic accountability and constitutional governance. The securitization of these actors therefore carries significant implications for constitutionalism, political participation, and rule of law in Kenya.

77 International Center for Not-for-Profit Law (ICNL). (2023). Counterterrorism Measures and Civic Space.
78 Amnesty International. (2024). Kenya Human Rights and Protest Crackdowns Reports.
79 Reporters Without Borders. (2025). Kenya Press Freedom Index
80 CIVICUS Monitor. (2025). Kenya Civic Space Report.
81 Buyse, A. (2018). Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights.
82 Glasius, M. (2022). Authoritarian Practices and the Transformation of Civic Space.

Kenyan Government Agencies **Weaponized** Against Dissent

2021–2026 · Crackdown on protesters, bloggers, NGOs, human rights defenders, activists & journalists

AGENCIES WEAPONIZED, BY SHARE OF DOCUMENTED USES

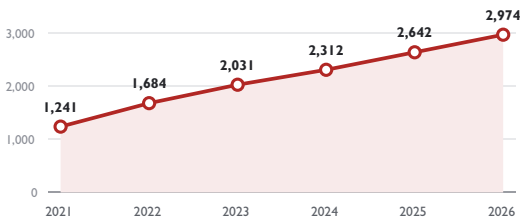
	AGENCY	SHARE OF DOCUMENTED USES	PRIMARY TOOLS / POWERS USED
01	**National Police Service**	29.0%	Arrests & detentions · Use of force · Dispersal of protests · Surveillance & intimidation
02	**Directorate of Criminal Investigations (DCI)**	20.2%	Criminal investigations · Summons & interrogations · Threats & harassment · Charge sheets
03	**Communications Authority of Kenya**	14.2%	Internet shutdowns · Content blocking · Disruption of online services
04	**Kenya Revenue Authority**	12.4%	Tax audits · Freezing of accounts · Demand notices · Harassment of NGOs
05	**Commercial banks**	8.3%	Account freezes · Transaction monitoring · Closure of accounts
06	**Financial Reporting Centre (FRC)**	6.6%	Financial intelligence reports · Suspicious transaction reports · Referrals to investigations
07	**PBORA**	4.8%	NGO deregistration · Compliance checks · Revocation of registrations
08	**Social Development departments**	2.9%	Suspension/cancellation of community group licences · Denial of clearances · Inspections
09	**Media Council of Kenya**	1.0%	Warnings & sanctions · Media blackouts · Licence suspensions
10	**Other agencies (Immigration, county governments, etc.)**	0.6%	Surveillance · Deportation · Denial of public benefits · Administrative sanctions

Share of total documented uses (2021–2026): 100%

COMMON TACTICS USED AGAINST CIVIC ACTORS

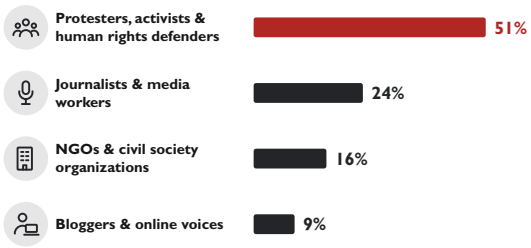
- Arbitrary arrests & detention
- Criminalization of dissent
- Surveillance & monitoring
- Account freezes & financial restrictions
- Internet shutdowns & digital restrictions
- Intimidation & threats
- NGO deregistration & closure
- Media harassment & censorship
- Smear campaigns & disinformation

TREND: TOTAL DOCUMENTED USES



Total documented uses (2021–2026): **12,884**

TYPE OF TARGET MOST AFFECTED



Share of documented cases by target group

ANALYSIS (2021–2026)

- Law enforcement agencies (Police, DCI, NIS/ISO) are the most weaponized, accounting for nearly half (49.2%) of all documented uses.
- Judicial and regulatory institutions are increasingly used to legitimize repression through charges, deregistration and compliance actions.
- Financial and digital control is rising — account freezes, tax audits and internet shutdowns have become core tools of suppression.
- Human rights defenders, protesters and activists bear the brunt of state repression, followed by journalists and media workers.
- The steady increase each year shows a deepening and normalized pattern of state crackdown on civic space.

Sources: Kenya National Commission on Human Rights (KNCHR) Annual Reports (2021–2025); Office of the Director of Public Prosecutions (ODPP) Reports; Amnesty International; Human Rights Watch; Reporters Without Borders; Media Council of Kenya Reports; civil society organizations. Note: data based on open-source documentation and verified reports (2021–2026).

Figure 3: State Agencies weaponized Against Dissent (2021-2026)

f) Law Enforcement Agencies as Primary Instruments of Securitization

This study identifies the National Police Service as the most frequently weaponized institution, accounting for approximately 29% of documented actions during the period of analysis. Police operations primarily involved arbitrary arrests, dispersal of protests, use of force, surveillance, intimidation, and preventive detention. These measures intensified during anti-government demonstrations in 2023, Gen-Z protests in 2024, and fuel price protests in 2026.[83] Reports by the Kenya National Commission on Human Rights (KNCHR) and Amnesty International documented incidents involving excessive force, enforced disappearances, and unlawful detention of protestors and activists during these protest waves.[84]

Closely linked to police operations was the role of the Directorate of Criminal Investigations (DCI), accounting for approximately 20.2% of documented actions. The DCI increasingly relied on criminal investigations, interrogations, summons, and cybercrime-related prosecutions targeting bloggers, digital activists, and protest organizers. Authorities frequently invoked provisions of the Computer Misuse and Cybercrimes Act, the Penal Code, and the Prevention of Terrorism Act to justify arrests relating to "false publication," "incitement," "cyber harassment," "economic sabotage," and "subversive activities".[85]

Several judicial decisions emerged concerning cybercrime prosecutions and digital dissent. In *Republic v David Oaga Mokaya* (Milimani Criminal Court, Criminal Case No. E176 of 2025), the accused was acquitted after prosecutors failed to establish authorship of alleged false information relating to President William Ruto. Similarly, in *Republic v Rose Njeri* (Milimani Criminal Case No. E312 of 2025), charges against a civic technologist accused of developing a public participation tool were dismissed for lack of sufficient legal grounding. These decisions reflected growing judicial concern regarding the misuse of cybercrime laws against legitimate civic expression and digital participation.

g) Digital/Media Regulation and Communications Surveillance

This study further identifies the Communications Authority of Kenya as accounting for 14.2% of documented actions. The Communications Authority increasingly became central in internet disruptions, content blocking, digital surveillance, and disruption of online services during protest periods. During the June 2024 Gen-Z protests, civil society organizations reported temporary disruptions affecting internet accessibility, livestreaming, and digital organizing platforms.[86] The Media Council of Kenya and other communications-related agencies also emerged as important tools in regulating public discourse. Journalists and media houses increasingly faced warnings, sanctions, harassment, accreditation restrictions, and threats during periods of political tension and protest mobilization (Reporters Without Borders, 2025).[87]

This study demonstrates that journalists and media workers accounted for approximately 24% of the most affected groups during the period of analysis. Media organizations reported intimidation, surveillance, and censorship pressures particularly during coverage of police violence, anti-government protests, and Gen-Z mobilizations. International observers warned that such practices undermined press freedom protections guaranteed under Article 34 of the Constitution of Kenya 2010 and broader democratic accountability mechanisms.[88]

The securitization of digital space reflected broader global patterns where governments increasingly regulate online activism under cybersecurity and misinformation frameworks. Kenyan authorities justified such measures as necessary to prevent incitement, hate speech, misinformation, and threats to national security. However, digital rights organizations argued that these actions violated constitutional protections under Article 33 on freedom of expression and Article 35 on access to information.[89] Internationally, the United Nations Human Rights Committee has consistently emphasized that restrictions on digital expression must satisfy the principles of legality, necessity, and proportionality under Article 19 of the ICCPR.[90]

83 Amnesty International. (2025). Kenya: Crackdown on Protesters and Civil Society.
84 Kenya National Commission on Human Rights (KNCHR). (2024). Annual Human Rights Report
85 ARTICLE 19 Eastern Africa. (2024). Kenya: Digital Rights and Protest Suppression.
86 CIPESA. (2024). Internet Disruptions and Digital Authoritarianism in East Africa.
87 Reporters Without Borders. (2025). Kenya Press Freedom Index.
88 Committee to Protect Journalists. (2024). Kenya Press Freedom Reports.
89 ARTICLE 19 Eastern Africa. (2024) above
90 United Nations Human Rights Committee. (2011). General Comment No. 34 on Freedom of Expression under Article 19 ICCPR.

h) Financial Institutions and Economic Securitization

One of the most significant developments illustrated in this study is the growing use of financial institutions as instruments of civic repression. The Kenya Revenue Authority (12.4%), commercial banks (8.3%), and the Financial Reporting Centre (6.6%) increasingly became involved in financial audits, account freezes, transaction monitoring, suspicious transaction reporting, and enhanced scrutiny targeting NGOs, activists, and civil society actors.

This trend reflects the emergence of *"financial securitization"* of civic space, where anti-money laundering (AML) and counterterrorism financing (CTF) frameworks are increasingly used against civil society organizations. The Financial Action Task Force (FATF) standards on nonprofit organizations have frequently been criticized for enabling disproportionate restrictions on civic actors through banking exclusion, financial surveillance, and compliance burdens.[91] In Kenya, civil society organizations reported threats of deregistration, delayed compliance approvals, tax investigations, and freezing of organizational accounts during periods of heightened political contestation.[92]

The use of commercial banks and financial reporting systems against civic actors illustrates how securitization increasingly extends beyond conventional policing into economic governance structures. Human rights scholars argue that such measures often create a "chilling effect" on civil society by disrupting funding streams, intimidating donors, and restricting operational capacity without necessarily relying on direct criminal prosecution (Howell & Lind, 2010).[93]

i) Administrative Regulation of Civil Society

This study identifies the Public Benefit Organizations Regulatory Authority (PBORA) formerly the NGOs Coordination Board and Department of Social Development as significant administrative actors in civic space regulation. PBORA-related actions included PBO deregistration, compliance inspections, revocation of registrations, and enforcement of administrative requirements. During the period of analysis, governance and human rights organizations increasingly faced allegations of non-compliance, foreign interference, and political destabilization.[94] Similarly, the Department of Social Development has been accused of denying registration of governance and democracy community groups and in some cases also demanding that those already registered to change their objectives to livelihood related programs.

The securitization of civil society regulation intensified during the Gen-Z protests of 2024 and subsequent protest periods. Human rights organizations documented raids on PBO offices, threats of suspension, financial scrutiny, and intimidation targeting organizations supporting protest victims and documenting police abuses.[95] Such actions reflected broader regional patterns where African governments increasingly portray foreign-funded NGOs as threats to sovereignty and national stability, similar to developments observed in Uganda, Tanzania, and Ethiopia.[96]

2.2.5 Civic Space Issues Triggering Securitization in Kenya

2.2.5.1 Repressive Economic Conditions and Citizens Mobilization

Deteriorating economic conditions emerged as one of the principal drivers of civic mobilization, protest movements, and political unrest in Kenya over the past five years. The post-COVID-19 recovery period was characterized by rising inflation, escalating fuel prices, depreciation of the Kenyan shilling, increasing public debt, unemployment, and aggressive taxation policies introduced through successive Finance Acts. According to the Kenya National Bureau of Statistics (KNBS), inflation rates rose steadily between 2022 and 2025, with food and fuel inflation disproportionately affecting low-income households and urban youth.[97] The International Monetary Fund (IMF) similarly observed that Kenya's fiscal consolidation agenda, including subsidy removals and increased taxation, generated widespread socio-economic pressure despite being justified as necessary for macroeconomic stabilization.[98]

91 International Center for Not-for-Profit Law (ICNL). (2023). Financial Action Task Force and Civic Space.
92 CIVICUS Monitor. (2025). Kenya Civic Space Report.
93 Howell, J., & Lind, J. (2010). Counter-Terrorism and the Restriction of Civil Society Space.
94 International Commission of Jurists Kenya. (2024). Civic Space and Constitutionalism in Kenya.
95 Amnesty International. (2025). Kenya: Crackdown on Protesters and Civil Society.
96 CIVICUS Monitor. (2025). Kenya Civic Space Report.
97 Kenya National Bureau of Statistics (KNBS). (2024). Economic Survey 2024. Nairobi: Government Printer.
98 International Monetary Fund (IMF). (2023). Kenya: Staff Report for the 2023 Article IV Consultation. Washington DC: IMF.

These economic hardships contributed significantly to growing public dissatisfaction and the emergence of sustained anti-government demonstrations across major urban centers.

Kenya's securitization of public levies including the Fuel Levy and Housing Levy has intensified civic mobilization, with citizens perceiving these measures as opaque and unconstitutional.[99] The government's collateralization of future revenues, such as the Road Maintenance Levy Fund, raised billions but sparked protests over debt accountability and fiscal justice.[100] Online, Gen-Z activists leveraged social media to amplify dissent, while offline mobilization manifested in mass demonstrations against perceived exploitation. These movements highlight how securitization strategies, framed as debt management, have instead triggered public resistance and demands for transparency in Kenya's civic space.[101]

The first major wave of economically driven protests intensified during the 2022 electoral transition period and following the enactment of the Finance Act, 2023. Opposition-led demonstrations organized under the Azimio la Umoja coalition protested the rising cost of living, fuel taxes, high food prices, and perceived failures in governance and electoral accountability.[102] Demonstrations spread across Nairobi, Kisumu, Mombasa, Nakuru, Kisii, and other urban centres, leading to confrontations between protestors and security agencies.

Reports by the Kenya National Commission on Human Rights (KNCHR) documented numerous incidents involving excessive use of force, arbitrary arrests, deaths, and injuries during the policing of the protests.[103] State authorities increasingly framed the demonstrations as threats to public order, economic stability, and national security, thereby justifying deployment of anti-riot police units, enhanced intelligence operations, and restrictions on assemblies. Human Rights Watch observed that authorities frequently characterized opposition protests as attempts to destabilize the government and undermine economic activity.[104]

The securitization of economic grievances became more pronounced during the June 2024 #RejectFinanceBill2024 protests, which represented one of the largest youth-led protest movements in Kenya's recent history. Organized largely through decentralized digital platforms such as X (formerly Twitter), TikTok, WhatsApp, Instagram, and Telegram, the protests reflected a transformation in civic mobilization and political participation among digitally connected youth populations.[105] Protestors opposed proposed tax increases under the Finance Bill, 2024, arguing that the measures would worsen economic hardship, unemployment, and inequality. Demonstrations rapidly escalated into nationwide protests, culminating in the storming of Parliament on 25 June 2024 after legislators passed the Bill. According to reports by CIVICUS Monitor[106] and KNCHR[107], the state responded through deployment of live ammunition, internet disruptions, enforced disappearances, arbitrary detentions, and military-assisted security operations. Senior government officials described some protest actions as "economic sabotage," "terrorism," and attempts at unconstitutional regime change, thereby deepening the securitization narrative surrounding civic dissent.

The securitization of economic protests between 2023 and 2026 generated several criminal prosecutions and judicial interventions, particularly following the anti-government demonstrations against the Finance Bill, 2024. In July 2025, the Office of the Director of Public Prosecutions (ODPP) publicly defended the use of terrorism-related charges against individuals accused of participating in attacks on courts, police stations, and government installations during the June 25 protests and subsequent Saba Saba demonstrations.[108] Prosecutors argued that destruction of public infrastructure could fall within the definition of terrorism under Sections 2 and 4 of the Prevention of Terrorism Act, 2012. Civil society organizations, including Katiba Institute and Amnesty International Kenya, criticized the prosecutions as disproportionate and inconsistent with constitutional protections relating to peaceful assembly, political participation, and freedom of expression under Articles 33, 36, and 37 of the Constitution of Kenya, 2010

99 Afronomicslaw. Assessing the Security in Securitization – Kenya's Collateralization of Future Revenue. African Sovereign Debt Justice Network, 23 Sept 2025.

100 The National Treasury. Annual Public Debt Management Report 2024/2025. Nairobi: Government of Kenya, 2025.

101 The National Treasury. Medium Term Debt Management Strategy 2026/27–2028/29. Nairobi: Government of Kenya, 2026.

102 Amnesty International Kenya. (2023). Kenya: Police Must Respect Rights During Cost of Living Protests. Nairobi: Amnesty International.

103 Kenya National Commission on Human Rights (KNCHR). (2023). Report on Human Rights Violations During Public Protests in Kenya. Nairobi: KNCHR.

104 Human Rights Watch. (2023). Kenya: Excessive Force Used Against Protestors. New York: Human Rights Watch.

105 Article 19 Eastern Africa. (2024). Digital Rights and Civic Space During the #RejectFinanceBill2024 Protests. Nairobi: Article 19.

106 CIVICUS Monitor. (2024). Kenya: Civic Space Under Pressure Amid Anti-Finance Bill Protests. Johannesburg: CIVICUS.

107 Kenya National Commission on Human Rights (KNCHR). (2024). Preliminary Report on the #RejectFinanceBill2024 Demonstrations. Nairobi: KNCHR.

108 Office of the Director of Public Prosecutions (ODPP). (2025). Statement on Prosecution of Violence and Destruction During Public Protests. Nairobi: ODPP.

(Katiba Institute, 2025).[109] Most of these prosecutions remained ongoing by mid-2026, raising broader concerns regarding the weaponization of anti-terrorism frameworks to suppress political dissent.

Prominent activists and protest organizers similarly faced criminal investigations and prosecutions linked to anti-government mobilization. In *Republic v Boniface Mwangi* (Milimani Criminal Court, 2025, ongoing), activist Boniface Mwangi was charged with unlawful possession of ammunition after security officers allegedly recovered tear gas canisters during a raid on his residence. Human rights organizations argued that the prosecution reflected broader patterns of intimidation targeting critics of government economic policies and organizers of anti-government demonstrations.[110] Reports further alleged that investigators initially contemplated terrorism-related allegations before ultimately preferring lesser criminal charges. The case remained ongoing by 2026 and became emblematic of the growing convergence between public order enforcement, national security narratives, and the criminalization of civic dissent in Kenya.

More broadly, the securitization of economic protests during the period of analysis reflected a wider regional and global trend in which states increasingly framed socio-economic dissent as a security threat rather than a legitimate expression of democratic participation. Comparative studies by CIVICUS Monitor and the International Center for Not-for-Profit Law (ICNL) demonstrate that governments across Africa increasingly relied on public order laws, anti-terror legislation, cybercrime laws, and financial surveillance mechanisms to regulate protest movements and digital activism.[111]

In Kenya, this trend significantly altered the relationship between the state and civic actors, contributing to shrinking civic space, normalization of securitized governance, and growing tensions between constitutional freedoms and state security interests.

2.2.5.2 Election Unrests, Political Transitions and State Power Contestation

Electoral periods in Kenya have historically represented moments of heightened civic mobilization, political contestation, and intensified state securitization. During the period of analysis, civic space restrictions increasingly coincided with electoral transitions, anti-government mobilization, and post-election disputes. Elections in Kenya are not merely democratic exercises but high-stakes political processes deeply intertwined with control over state resources, patronage networks, and institutional power. Consequently, successive governments have increasingly framed political dissent, protests, opposition mobilization, and civic activism during transition periods as threats to public order, national security, and constitutional stability.[112] This trend accelerated during the transition from the Uhuru Kenyatta administration to the William Ruto administration in 2022 and continued through subsequent anti-government protests between 2023 and 2026.

Political transitions involving an incumbent-backed administration often produce heightened securitization because the state apparatus is deployed not only to maintain public order but also to consolidate political power and secure regime continuity. During the 2022 general elections, security agencies, communications regulators, and administrative institutions were placed at the centre of electoral management and political stabilization. Reports by the Kenya National Commission on Human Rights (KNCHR)[113] and Human Rights Watch documented increased police deployments, restrictions on assemblies, surveillance of political actors, and intimidation of protestors during the election period.[114] The securitization logic intensified after the declaration of presidential results, particularly following the opposition's rejection of the outcome and allegations of electoral irregularities. The state increasingly framed opposition mobilization as a threat to economic stability and constitutional order, thereby justifying deployment of anti-riot police units and restrictions on demonstrations.

Kenya's post-election environment has consistently generated civic tensions due to unresolved grievances regarding electoral credibility, exclusion from political power, and perceived institutional bias. The Supreme Court decision in *Raila Odinga & Another v Independent Electoral and Boundaries Commission & 2 Others* [2022] KESC 56 (KLR) became a defining judicial moment during the 2022 transition period. Petitioners challenged the declaration of William Ruto as President-elect, alleging irregularities in tallying, verification, and transmission of results.

109 Katiba Institute. (2025). Constitutionalism and the Criminalization of Protest in Kenya. Nairobi: Katiba Institute.

110 Defenders Coalition Kenya. (2025). Human Rights Defenders Under Threat in Kenya. Nairobi: Defenders Coalition.

111 International Center for Not-for-Profit Law (ICNL). (2024). Africa Civic Freedom Monitor. Washington DC: ICNL.

112 Cheeseman, N., Lynch, G., & Willis, J. (2016). Decentralisation in Kenya: The Governance of Governors. Journal of Modern African Studies, 54(1), 1–35.

113 Kenya National Commission on Human Rights (KNCHR). (2023). Report on Human Rights Violations During Public Demonstrations. Nairobi: KNCHR.

114 Human Rights Watch. (2022). Kenya: Concerns Over Police Conduct During Elections. New York: Human Rights Watch.

However, the Supreme Court unanimously upheld the presidential results, finding insufficient evidence to invalidate the election. The Court held that the petitioners had failed to discharge the evidentiary burden required under Article 140 of the Constitution and affirmed the legality of the electoral process. Although the judgment reinforced constitutional mechanisms for dispute resolution, opposition supporters and sections of civil society expressed dissatisfaction with the outcome, arguing that the decision failed to adequately address broader concerns regarding transparency and institutional accountability.[115]

The aftermath of the 2022 elections and the subsequent cost-of-living protests in 2023 illustrated how post-election dissatisfaction frequently evolves into securitized civic contestation. Demonstrations organized under the Azimio la Umoja coalition protested rising fuel prices, taxation measures under the Finance Act, 2023, and alleged failures in governance and electoral accountability. Authorities increasingly characterized these protests as unlawful, economically disruptive, and politically destabilizing.[116] According to reports by Article 19 Eastern Africa and KNCHR, security agencies responded through excessive use of force, arbitrary arrests, surveillance operations, and restrictions on assemblies.[117] The use of public order laws, anti-terror narratives, and digital surveillance mechanisms demonstrated how electoral tensions increasingly merged with broader securitization strategies aimed at controlling dissent and protecting regime legitimacy.[118]

The securitization of civic space during political transitions further intensified during the June 2024 #RejectFinanceBill2024 protests and subsequent demonstrations in 2025. Although primarily driven by economic grievances, the protests evolved into broader anti-government mobilizations challenging state legitimacy and governance practices. Senior government officials described sections of the protests as attempts at unconstitutional regime change, economic sabotage, and threats to national security. This framing justified deployment of military-supported operations, internet disruptions, and terrorism-related investigations against protest organizers.[119] The Office of the Director of Public Prosecutions (ODPP) defended the use of terrorism-related charges against individuals accused of attacking courts and police stations during protests, arguing that such acts fell within the scope of the Prevention of Terrorism Act, 2012. Civil society organizations, however, argued that these prosecutions reflected growing weaponization of security laws to suppress political dissent and civic activism.[120]

Ultimately, Kenya's experience during the period of analysis demonstrates that electoral transitions remain among the most significant triggers of civic space securitization. Political competition, disputed electoral outcomes, and efforts to consolidate executive authority increasingly resulted in deployment of coercive state power against protestors, activists, journalists, and opposition actors. While the Constitution of Kenya, 2010 guarantees freedoms of expression, association, assembly, and political participation under Articles 33, 36, 37, and 38, electoral periods continue to expose the fragility of these protections when confronted with state security interests and regime preservation imperatives. The Kenyan experience therefore reflects broader global trends in which democratic transitions increasingly become securitized political processes characterized by shrinking civic space, normalization of exceptional measures, and growing tensions between constitutional democracy and state power.

2.2.5.3 Terrorism Sweeps

During the period of analysis, counterterrorism operations increasingly became an important mechanism through which civic space in Kenya was securitized. While Kenya has long faced genuine terrorism threats associated with the activities of Al-Shabaab and regional insecurity in the Horn of Africa, the period under review witnessed growing concerns regarding the expansion of counterterrorism powers beyond legitimate security objectives into broader regulation of civic activity, digital dissent, and protest mobilization. Authorities increasingly relied on terrorism-related narratives, emergency policing tactics, surveillance operations, financial monitoring, and anti-terrorism legislation to justify crackdowns on activists, protestors, religious leaders, digital organizers, and civil society organizations.[121] This trend reflected broader global patterns in which states increasingly frame dissent and political instability as national security threats requiring exceptional legal and policing measures.[122]

115 Kanyinga, K., & Odote, C. (2023). The 2022 Kenyan Elections and the Future of Constitutional Democracy. Nairobi: University of Nairobi Press.

116 Amnesty International Kenya. (2023). Kenya: Authorities Must Respect Right to Protest During Cost-of-Living Demonstrations. Nairobi: Amnesty International.

117 Article 19 Eastern Africa. (2023). Freedom of Assembly and Digital Rights During Kenya's Anti-Government Protests. Nairobi: Article 19.

118 Kenya National Commission on Human Rights (KNCHR). (2023). Report on Human Rights Violations During Public Demonstrations. Nairobi: KNCHR.

119 CIVICUS Monitor. (2024). Kenya: Civic Space Restrictions During Anti-Finance Bill Protests. Johannesburg: CIVICUS.

120 Katiba Institute. (2025). Security Laws and the Criminalization of Protest in Kenya. Nairobi: Katiba Institute.

121 Amnesty International Kenya. (2024). Kenya: Counterterrorism and Human Rights Violations. Nairobi: Amnesty International.

122 Human Rights Watch. (2025). World Report 2025: Kenya. New York: Human Rights Watch.

Kenya's counterterrorism framework is principally anchored in the Prevention of Terrorism Act, 2012, the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), and related national security legislation. During the period of analysis, these laws increasingly intersected with civic space regulation through terrorism sweeps, surveillance operations, financial investigations, and preventive detentions targeting individuals suspected of supporting extremist activities. Human rights organizations documented numerous security operations in Nairobi, Mombasa, Garissa, Mandera, Lamu, and parts of North Eastern Kenya where authorities conducted mass arrests, prolonged detentions, enforced disappearances, and profiling of Muslim communities under counterterrorism operations.[123] Critics argued that the broad language contained in anti-terror legislation enabled authorities to blur distinctions between legitimate security operations and suppression of constitutionally protected freedoms of association, religion, expression, and assembly.

The securitization of civic space intensified significantly during periods of anti-government protests and digital mobilization between 2023 and 2026. Following the June 2024 #RejectFinanceBill2024 demonstrations and subsequent Saba Saba protests, senior government officials increasingly characterized attacks on police stations, courts, and public infrastructure as acts of terrorism and economic sabotage. In July 2025, the Office of the Director of Public Prosecutions (ODPP) publicly defended the use of terrorism-related charges under Sections 2 and 4 of the Prevention of Terrorism Act against protestors accused of destroying government facilities during demonstrations.

Prosecutors argued that violent attacks on public institutions fell within the statutory definition of terrorism because they were intended to intimidate the public and destabilize state institutions.[124] Civil society organizations including Katiba Institute and Amnesty International Kenya criticized the prosecutions as disproportionate and inconsistent with constitutional protections relating to peaceful assembly and political participation. Most of the prosecutions remained ongoing by 2026.

One of the most significant judicial precedents concerning counterterrorism and civic freedoms remained *Muslims for Human Rights (MUHURI) & Another v Inspector General of Police & 5 Others [2015] eKLR*, whose implications continued to shape civic space debates during the period of analysis. In that case, the government had frozen the bank accounts of Muslims for Human Rights (MUHURI) and Haki Africa under allegations of supporting terrorism. The High Court held that the freezing orders violated constitutional rights to fair administrative action and freedom of association because the organizations had not been accorded due process. The Court emphasized that national security measures must comply with constitutional safeguards and cannot arbitrarily restrict legitimate civil society activities. Although the judgment represented an important protection for civic actors, human rights organizations argued that authorities continued to rely on financial surveillance, account freezes, and enhanced compliance requirements under anti-money laundering frameworks to target organizations perceived as politically sensitive.[125]

Counterterrorism operations also increasingly intersected with digital surveillance and online activism. Authorities expanded monitoring of social media platforms, encrypted communications, and digital fundraising channels under the justification of combating radicalization and extremist propaganda. Reports by CIPESA and Article 19 Eastern Africa documented growing use of cybercrime investigations, phone tracking, and intelligence-led surveillance against bloggers, online activists, and protest organizers during periods of heightened political tension.[126] Human rights defenders argued that such practices contributed to self-censorship, fear, and shrinking digital civic space, particularly among young activists associated with anti-government mobilization.[127]

Ultimately, the terrorism sweeps and counterterrorism operations conducted during the period of analysis significantly contributed to the securitization of civic space in Kenya. While the state possesses legitimate obligations under Article 238 of the Constitution of Kenya, 2010 to protect national security, the increasing reliance on terrorism narratives, exceptional policing powers, financial surveillance, and preventive detention mechanisms frequently exceeded the principles of legality, necessity, and proportionality required under both domestic constitutional law and international human rights standards.

123 Open Society Foundations. (2023). Counterterrorism and Human Rights in Kenya. New York: Open Society Foundations.

124 Office of the Director of Public Prosecutions (ODPP). (2025). Statement on Prosecution of Violence During Public Demonstrations. Nairobi: ODPP.

125 International Center for Not-for-Profit Law (ICNL). (2024). Kenya Civic Freedom Monitor. Washington DC: ICNL.

126 CIPESA. (2024). State of Internet Freedom in East Africa 2024. Kampala: Collaboration on International ICT Policy for East and Southern Africa.

127 Article 19 Eastern Africa. (2024). Digital Surveillance and Civic Space in Kenya. Nairobi: Article 19.

The Kenyan experience demonstrates how counterterrorism frameworks can gradually evolve into broader governance tools for regulating dissent, managing political contestation, and constraining civic participation in democratic societies.

2.2.5.4 Ethnic Conflict, Banditry and the Securitization of Civic Space in Kenya

During the reference period, ethnic conflict, banditry operations, and localized insurgency-related insecurity increasingly became significant triggers for the securitization of civic space in Kenya, particularly in the North Rift region and parts of Lamu County. The Kenyan government framed recurrent violence in counties such as Baringo, Elgeyo Marakwet, Turkana, West Pokot, Samburu, and Laikipia as threats to national security, territorial integrity, and public order, thereby justifying deployment of military-supported security operations, curfews, communication restrictions, and expanded surveillance measures.[128] In Lamu County, insecurity associated with Al-Shabaab attacks similarly intensified securitized governance, with authorities increasingly relying on counterterrorism operations, mass policing, and intelligence-led restrictions affecting local communities, activists, journalists, and humanitarian actors.[129]

In the North Rift region, banditry and cattle rustling increasingly evolved from localized criminal activities into heavily militarized security concerns. Successive security operations such as "Operation Maliza Uhalifu" involved deployment of the Kenya Defence Forces, General Service Unit (GSU), Anti-Stock Theft Unit, and National Police Reservists across conflict-prone areas.

Authorities imposed curfews, restricted livestock markets, suspended public gatherings, and conducted mass disarmament exercises targeting communities suspected of supporting bandit networks.[130] Human rights organizations argued that these operations frequently resulted in arbitrary arrests, forced displacement, extrajudicial killings, and restrictions on freedom of movement and association affecting pastoralist communities and local civil society actors.[131] Civic actors documenting abuses or advocating for accountability reportedly faced intimidation and restrictions under the justification of protecting ongoing security operations.

The securitization of civic space was similarly pronounced in Lamu County, where recurrent attacks attributed to Al-Shabaab during the period of analysis intensified state security responses. Authorities increasingly relied on provisions of the Prevention of Terrorism Act, curfew regulations, and emergency policing powers to regulate movement, public assemblies, religious activities, and humanitarian operations. Reports by Muslims for Human Rights (MUHURI) and Open Society Foundations documented allegations of enforced disappearances, arbitrary detention, profiling of Muslim communities, and restrictions targeting journalists and human rights defenders operating in coastal counties.[132] The security situation in Lamu further intersected with contestation surrounding large infrastructure projects associated with the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor, where environmental activists and local community organizations increasingly operated within a highly securitized environment.

One significant judicial precedent during this period was *Katiba Institute & Another v Attorney General & Another* [2021] eKLR, where petitioners challenged the constitutionality of indefinite curfews imposed in parts of Lamu, Garissa, and Tana River counties under security regulations. The High Court held that while the state possesses constitutional obligations under Article 238 of the Constitution of Kenya, 2010 to protect national security, security measures limiting constitutional rights must comply with the principles of legality, necessity, proportionality, and accountability. The Court criticized prolonged and indefinite curfew extensions without adequate parliamentary oversight or public justification and emphasized that security operations cannot extinguish constitutional freedoms indefinitely. Although the Court did not completely invalidate the curfew regime, the judgment represented an important judicial affirmation that counterterrorism and anti-banditry operations remain subject to constitutional limitations and judicial review.

The period of analysis, therefore, demonstrated how ethnic conflict, banditry, and insurgency-related insecurity increasingly facilitated the normalization of exceptional security measures affecting civic freedoms in Kenya. In both the Rift Valley and Lamu regions, authorities increasingly relied on militarized policing, surveillance, curfews, administrative restrictions, and counterterrorism frameworks to regulate civilian populations and civic activity.

128 Human Rights Watch. (2023). Kenya: Security Operations and Civilian Abuses in Rift Valley. New York: Human Rights Watch.

129 Amnesty International Kenya. (2024). Kenya: Counterterrorism Operations and Human Rights in Coastal Kenya. Nairobi: Amnesty International.

130 International Crisis Group. (2023). Managing Kenya's Banditry Crisis in the Rift Valley. Brussels: International Crisis Group.

131 Kenya National Commission on Human Rights (KNCHR). (2024). Human Rights Violations in Security Operations in North Rift Kenya. Nairobi: KNCHR.

132 Open Society Foundations. (2023). Counterterrorism, Security and Human Rights in Kenya. New York: Open Society Foundations.

While the state maintained legitimate obligations to protect communities from violence and terrorism, human rights organizations consistently warned that the securitization of these conflict zones frequently exceeded constitutional and international human rights standards relating to freedom of expression, movement, association, and assembly. Consequently, insecurity and ethnic conflict increasingly became mechanisms through which civic space restrictions were normalized within Kenya's broader governance and national security architecture.

2.2.5.5 Health and Humanitarian Emergencies

During the period of analysis, health and humanitarian emergencies increasingly became important triggers for the securitization of civic space in Kenya. The COVID-19 pandemic, drought-induced humanitarian crises, vaccine-related public health concerns, Mpox outbreaks, and recurring cholera emergencies provided the state with expanded legal and administrative authority to regulate movement, assemblies, humanitarian action, and public communication. While the government justified these measures as necessary to protect public health and national security, human rights organizations and civil society actors increasingly argued that emergency powers were frequently applied disproportionately, resulting in restrictions on constitutional freedoms relating to assembly, association, expression, and humanitarian action.[133] The securitization of emergencies reflected broader global trends in which governments increasingly relied on public health laws and emergency frameworks to consolidate executive authority and regulate civic participation during crises.[134]

The most significant phase of emergency securitization emerged during the COVID-19 pandemic between 2020 and 2022. The Kenyan government imposed curfews, lockdowns, inter-county travel restrictions, mandatory quarantines, and bans on public gatherings under the Public Health Act and Public Order regulations. Enforcement of movement restrictions was heavily militarized, involving the National Police Service and other security agencies. Reports by the Kenya National Commission on Human Rights (KNCHR) documented numerous incidents involving arbitrary arrests, excessive force, deaths, and harassment during enforcement of curfews and lockdown measures.[135] Civil society organizations further reported that restrictions on movement and public gatherings significantly affected humanitarian relief work, community organizing, labor protests, and civic advocacy activities.

One of the most significant judicial interventions during this period was *Law Society of Kenya v Cabinet Secretary for Health & Others* [2020] eKLR, where petitioners challenged the legality and constitutionality of mandatory quarantine measures imposed during the pandemic. The High Court held that while the state possesses constitutional obligations to protect public health under Article 43 of the Constitution of Kenya, 2010, public health measures must comply with constitutional safeguards relating to dignity, proportionality, and fair administrative action. The Court criticized the forced quarantine regime for imposing punitive costs on individuals without sufficient legal justification and emphasized that emergency health measures remain subject to constitutional scrutiny. The judgment became an important precedent affirming that public health emergencies do not extinguish constitutional rights and freedoms.

The 2022 drought and malnutrition crisis in northern Kenya similarly intensified securitized governance. Following declaration of a national disaster, authorities increasingly coordinated humanitarian assistance through centralized state-led frameworks involving county commissioners, security agencies, and administrative officers. According to reports by Human Rights Watch and the Kenya Red Cross Society, humanitarian access in some regions became heavily regulated, with NGOs and community-based organizations required to obtain additional clearances before distributing relief supplies.[136] Community protests relating to food insecurity, drought response, and livestock losses were in several instances dispersed by police under public order and security justifications. Human rights organizations argued that securitization of humanitarian operations weakened community participation and restricted independent humanitarian advocacy.[137]

Public health securitization continued during the 2023 vaccine-associated poliomyelitis concerns and the 2024 Mpox outbreak. Authorities expanded border health checks, disease surveillance, and restrictions on gatherings under the Public Health Act and emergency health regulations.

133 Amnesty International Kenya. (2022). Kenya: Human Rights Violations During COVID-19 Enforcement. Nairobi: Amnesty International.

134 United Nations. (2021). COVID-19 and Human Rights: Guidance on Emergency Measures. New York: United Nations.

135 Kenya National Commission on Human Rights (KNCHR). (2021). Assessment of the Government's Response to the COVID-19 Pandemic. Nairobi: KNCHR.

136 Human Rights Watch. (2022). Kenya: Drought Crisis and Humanitarian Access. New York: Human Rights Watch.

137 Kenya Red Cross Society. (2022). Drought Emergency Response Reports. Nairobi: Kenya Red Cross.

During the Mpox outbreak, state authorities invoked health regulations to monitor travel, limit assemblies, and caution against dissemination of "misinformation" online. Reports by Article 19 Eastern Africa documented concerns that online speech relating to public health responses increasingly became subject to surveillance and possible prosecution under cybercrime and misinformation laws (Article 19, 2024).[138] Civic actors argued that emergency health narratives were at times used to discourage demonstrations and public criticism of government response measures.

Between 2025 and 2026, recurring cholera outbreaks further deepened emergency securitization through deployment of the Public Health Emergency Operations Centre (PHEOC) and enhanced administrative controls over humanitarian coordination. Community groups and informal networks attempting to organize independent relief efforts reportedly faced restrictions and increased state oversight in some counties. Critics argued that the state increasingly monopolized humanitarian coordination under emergency management frameworks, thereby limiting grassroots participation and independent monitoring of relief operations.[139]

Ultimately, health and humanitarian emergencies during the period of analysis significantly expanded the scope of securitized governance in Kenya. Although the Constitution of Kenya, 2010 recognizes the state's obligation to protect public health and national security, the repeated reliance on emergency measures, curfews, surveillance, and administrative restrictions frequently generated tensions between public safety objectives and constitutional freedoms. The Kenyan experience demonstrates how emergency governance frameworks can gradually normalize exceptional state powers and contribute to shrinking civic space under the justification of protecting public welfare and national stability.

2.2.5.6 Technology-Facilitated GBV, Cyberbullying and the Impact on Women HRDs and Female Journalists

In the past five years, technology-facilitated gender-based violence (GBV) and cyberbullying have severely impacted women human rights defenders (HRDs) and female journalists in Kenya. Amnesty International reports that online harassment - including sexualized images, doxxing, and AI-generated pornographic content - was systematically deployed against women activists during youth-led protests.[140] These attacks, often coordinated through pro-government networks, created a chilling effect, silencing women's participation in civic spaces. Female journalists faced smear campaigns and disinformation portraying them as foreign-funded agents, undermining credibility and safety.

Online threats frequently escalated into offline risks such as arrests, abductions, and raids, illustrating the fusion of digital repression with physical violence.[141] This environment has eroded trust, curtailed freedom of expression, and marginalized women's voices in Kenya's democratic discourse.

2.2.5.7 LGBTIQ+ debate

The 2023 Supreme Court ruling affirming the right of LGBTQI+ organisations to register marked a milestone for equality but provoked fierce opposition from conservative political and religious leaders. Many framed the decision as a threat to "African family values," portraying LGBTQI+ rights as Western neocolonial impositions.[142] In response, MP Peter Kaluma introduced the Family Protection Bill (FPB), which sought to criminalize same-sex relationships, restrict gender identity expression, and ban LGBTQI+ advocacy.[143] Religious institutions amplified anti-rights rhetoric, mobilizing congregations against perceived moral decline.

These debates intensified stigma, legitimized discrimination, and emboldened harassment of LGBTQI+ individuals. Civil society resistance prevented the FPB from being fully enacted, but the discourse entrenched hostility, polarizing Kenyan society. The backlash illustrates how judicial progress can trigger regressive legislative and religious campaigns, undermining constitutional protections and shrinking civic space for sexual minorities.[144]

138 Article 19 Eastern Africa. (2024). Public Health Emergencies and Digital Rights in East Africa. Nairobi: Article 19.
139 CIVICUS Monitor. (2025). Kenya Civic Space Report. Johannesburg: CIVICUS.
140 Amnesty International. Digital Repression and Gendered Harassment in Kenya. Annual Report, 2025.
141 Daily Nation (2025). Safaricom Data Access Investigation. Nairobi, December.
142 JSTOR (2023). Kenya's Family Protection Bill and Supreme Court Ruling.
143 CIVICUS (2025). The Family Protection Bill threatens to escalate violence against LGBTQI+ people.
144 ODI. Navigating the politics of backlash: LGBTQ+ rights and the Family Protection Bill in Kenya. 2025.

2.3 Judicialization of Civic Space

2.3.1 Conceptualizing Judicialization

The past decade has seen Kenya experience an intensified judicialization of civic space, where courts increasingly became central arenas for contestation over democratic participation, civic freedoms, state authority, and political dissent. The concept of "judicialization" has generated significant scholarly debate and is often misunderstood within governance and civic space discourse. Judicialization does not merely refer to the increased presence of courts in political life, nor does it automatically imply judicial activism or democratic decline. Rather, scholars broadly conceptualize judicialization as the process through which political, social, and governance disputes are increasingly framed, negotiated, and resolved through legal and judicial mechanisms.[145] Ran Hirschl describes judicialization as the "transfer of decision-making powers from representative institutions to judiciaries"[146], while Alec Stone Sweet argues that judicialization reflects the expansion of legal norms and adjudicatory processes into areas previously dominated by political negotiation.[147] In the civic space context, judicialization therefore refers to the increasing reliance on courts, litigation, prosecutions, injunctions, constitutional petitions, and legal procedures to either protect or constrain civic action and democratic participation.

Importantly, judicialization should not be confused with democratization, rule of law consolidation, or judicial independence alone. Nor should it be simplistically understood as inherently negative. As scholars such as Martin Shapiro (2002) observe, judicialization may simultaneously strengthen constitutional accountability while also enabling "governance through litigation," where legal processes themselves become instruments of political control, delay, intimidation, or repression.[148]

In many democratic and transitional societies, courts emerge both as protectors of rights and as sites where state power is legitimized through legal formality. Consequently, judicialization of civic space involves a dual reality: litigation can serve as a tool of resistance by civic actors while simultaneously becoming a mechanism for suppression through criminal prosecutions, regulatory harassment, and Strategic Lawsuits Against Public Participation (SLAPP suits). Kenya's civic space dynamics during the analysis period reflected this paradox profoundly.

One of the clearest manifestations of judicialization during this period involved the proliferation of Strategic Lawsuits Against Public Participation (SLAPP suits). SLAPP suits are legal proceedings initiated primarily to intimidate, silence, financially burden, or discourage critics, journalists, whistleblowers, activists, and civil society organizations from participating in public affairs.[149] In Kenya, SLAPP suits increasingly emerged in contexts involving corruption exposés, environmental justice, electoral accountability, digital activism, and criticism of political elites. Media organizations, bloggers, governance activists, and investigative journalists faced defamation claims, injunctive proceedings, cybercrime prosecutions, and commercial litigation designed less to secure judicial remedies than to discourage public scrutiny and civic participation.[150] The growth of SLAPP litigation demonstrated how judicial processes themselves may become mechanisms of civic suppression even within formally democratic constitutional systems.

The judicialization of civic space further manifested through increasing litigation and prosecutions initiated by state institutions against civil society organizations (CSOs), human rights defenders (HRDs), protest organizers, and digital activists. Institutions such as the Public Benefits Organizations Regulatory Authority (PBORA), Directorate of Criminal Investigations (DCI), the Office of the Director of Public Prosecutions (ODPP), and financial regulatory agencies increasingly relied on compliance proceedings, anti-money laundering investigations, cybercrime prosecutions, and anti-terrorism frameworks to regulate civic actors. Following the June 2024 #RejectFinanceBill2024 protests, authorities increasingly framed protest mobilization, digital activism, and attacks on public institutions as threats to national security and constitutional order. Civil society organizations argued that prosecutions under the Prevention of Terrorism Act and the Computer Misuse and Cybercrimes Act reflected broader patterns of securitized governance and weaponization of law against dissent.[151]

Several judicial precedents during the period of analysis illustrated the growing interaction between courts, digital rights, and civic participation. In *Republic v David Oaga Mokaya* (Milimani Criminal Court, Criminal Case No. E176 of 2025, judgment delivered on 19 February 2026), a Moi University student

145 Tate, C. N., & Vallinder, T. (1995). The Global Expansion of Judicial Power. New York: New York University Press.
146 Hirschl, R. (2008). The Judicialization of Mega-Politics and the Rise of Political Courts. Annual Review of Political Science, 11, 93–118.
147 Stone Sweet, A. (2000). Governing with Judges: Constitutional Politics in Europe. Oxford: Oxford University Press.
148 Martin Shapiro. (2002). Courts: A Comparative and Political Analysis. Chicago: University of Chicago Press.
149 Pring, G., & Canan, P. (1996). SLAPPs: Getting Sued for Speaking Out. Philadelphia: Temple University Press.
150 Mzalendo Trust. (2025). SLAPP Suits and Democratic Participation in Kenya. Nairobi: Mzalendo Trust.
151 Katiba Institute. (2025). Judicial Responses to Civic Space Restrictions in Kenya. Nairobi: Katiba Institute.

was acquitted of cybercrime charges after prosecutors failed to prove authorship of alleged false online publications concerning President William Ruto. Similarly, in *Republic v Rose Njeri* (Milimani Law Courts, Criminal Case No. E312 of 2025), civic technologist Rose Njeri was charged under Section 16 of the Computer Misuse and Cybercrimes Act for allegedly developing an automated civic participation platform enabling citizens to email Members of Parliament regarding the Finance Bill, 2025. The charges were later dismissed for lack of sufficient legal and factual grounding.[152] These cases illustrated increasing attempts to criminalize digital civic participation while simultaneously demonstrating the judiciary's role in limiting prosecutorial overreach.

At the same time, courts remained critical sites through which civic actors sought protection from executive excesses and unconstitutional state action. Public interest litigation increasingly challenged unlawful arrests, restrictions on protests, surveillance practices, internet disruptions, and public order regulations. In *Katiba Institute & Another v Attorney General & Another* [2021] eKLR, the High Court emphasized that security measures restricting constitutional rights must satisfy principles of legality, necessity, proportionality, and accountability.[153] Similarly, in *Law Society of Kenya v Cabinet Secretary for Health & Others* [2020] eKLR, the Court held that COVID-19 public health restrictions remained subject to constitutional scrutiny despite emergency circumstances.[154] Such decisions reflected what Hirschl (2008) terms the "juristocracy" phenomenon, where courts increasingly mediate politically sensitive governance disputes.[155]

However, the judicialization of civic space also generated concerns regarding selective justice, prolonged delays in public interest litigation, inconsistent jurisprudence, and judicial deference to executive security narratives. Courts occasionally upheld conservatory orders restricting demonstrations, sustained enforcement of contested cybercrime provisions, and deferred to state claims relating to public order and national security. Consequently, the judiciary increasingly occupied an ambivalent position within Kenya's civic space ecosystem: simultaneously functioning as a constitutional safeguard and a site through which restrictive governance practices were normalized. The Kenyan experience during the analysis period therefore demonstrates that judicialization of civic space is neither inherently emancipatory nor inherently repressive. Rather, it reflects the growing centrality of law and courts in mediating the tensions between constitutional democracy, state power, civic resistance, and political control in contemporary governance systems.

2.3.1.1 SLAPP Suits

Within the reference period, Kenya witnessed a significant rise in Strategic Lawsuits Against Public Participation (SLAPP suits), reflecting an increasingly judicialized approach to civic space governance. SLAPP suits are legal actions primarily intended not to secure judicial remedies, but to intimidate, silence, exhaust, or financially burden critics, activists, journalists, civil society organizations (CSOs), and citizens engaged in public interest advocacy.[156] As illustrated in this study, at least 186 documented SLAPP suits were filed between 2021 and mid-2026, targeting 247 individuals and organizations, with claims exceeding KES 1.26 billion. The growth of such litigation coincided with heightened political contestation, digital activism, investigative journalism, anti-corruption campaigns, and public protests against economic policies and governance failures.

The findings of this study indicate that journalists and media houses constituted the largest category of targets, accounting for approximately 41% of all documented SLAPP suits. Human rights defenders, activists, protest leaders, bloggers, academics, and CSOs similarly faced increased litigation risks. Many of these cases arose from investigative reporting, social media commentary, public criticism of political leaders, exposure of corruption scandals, or civic mobilization around issues such as the Finance Bill protests and governance accountability. This pattern aligns with broader global concerns that SLAPP suits are increasingly weaponized by political elites, corporations, and state-linked actors to suppress public participation and democratic scrutiny.[157]

152 Republic v Rose Njeri (Milimani Law Courts, Criminal Case No. E312 of 2025). Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2026/424/eng@2026-01-27

153 Katiba Institute & Another v Attorney General & Another [2021] eKLR. Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2020/1213/eng@2020-12-04

154 Law Society of Kenya v Cabinet Secretary for Health & Others [2020] eKLR. Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2020/9970/eng@2020-08-03

155 Hirschl, R. (2008).

156 Pring, George W., and Penelope Canan. SLAPPs: Getting Sued for Speaking Out. Temple University Press, 1996.

157 ARTICLE 19. Kenya: Freedom of Expression and Strategic Litigation Trends. London: ARTICLE 19, 2023.

Notorious SLAPP Actors in Kenya (2021–2026)

Strategic Lawsuits Against Public Participation (SLAPPs) used to silence dissent, intimidate critics and shrink civic space.

ENTITY	PERIOD	TARGETED GROUPS	TACTICS USED	OUTCOME / IMPACT
Kenya Police Service National Police Service	2025	Bloggers and activists (e.g. Albert Ojwang)	• Arrests • Intimidation • SLAPP-style charges	**Deaths in custody; chilling effect on dissent**
Safaricom PLC Telecommunications company	2024	KHRC, MUHURI and Nation Media journalists	• SLAPP threats • Vexatious complaints to the Media Council	**Condemned by INCLO; accused of aiding surveillance**
Kakuzi PLC Camellia PLC subsidiary	2021	KHRC and Ndula Resource Centre	• Defamation suit over a press statement	**Suit withdrawn after backlash; highlighted corporate intimidation**

THE IMPACT OF SLAPPs

- **Intimidation & fear**
- **Financial burden**
- **Self-censorship**
- **Reduced public participation**
- **Shrinking civic space**

WHAT ARE SLAPPs?

SLAPPs are legal actions, often without merit, designed to silence, intimidate and punish critics by draining their resources.

THE WAY FORWARD

- ✓ **Enact anti-SLAPP legislation**
- ✓ **Dismiss meritless suits early**
- ✓ **Protect journalists & HRDs**
- ✓ **Strengthen access to justice**
- ✓ **Promote transparency & accountability**

Defamation law remained the most frequently invoked legal mechanism in SLAPP litigation. As reflected in this study, approximately two-thirds of the cases involved allegations of reputational harm, libel, or publication of false statements. Both civil and criminal legal frameworks were deployed, despite growing international concern regarding the chilling effect of criminal defamation laws on freedom of expression. In *Jacqueline Okuta & Another v Attorney General & 2 Others* [2017] eKLR, the High Court declared Section 194 of the Penal Code on criminal defamation unconstitutional for violating Article 33 of the Constitution on freedom of expression.

Nevertheless, civil defamation suits continued to expand significantly within the period of analysis, particularly against investigative journalists and digital activists.

The study further demonstrates that SLAPP suits often impose severe financial and psychological burdens on defendants regardless of eventual judicial outcomes. Legal defense costs, repeated court appearances, reputational attacks, and prolonged litigation processes contributed to self-censorship and reduced civic participation. Several defendants reportedly withdrew publications, suspended activism, or limited investigative reporting due to fear of costly litigation. International human rights bodies

have consistently warned that SLAPP suits undermine democratic accountability by discouraging public oversight and criticism of powerful institutions.[158]

In *Safaricom PLC v. Robert Wanjala Kituyi* (Civil Appeal No. HCCA E207 Of 2025) Katiba Institute and KHRC represent Robert Wanjala Kituyi, a Kenyan investigative journalist, in a civil case by Safaricom Limited that restricts citizen rights and evades the obligations to provide information to the Kenyan public. This was a strategy by Safaricom PLC to prevent access to how Safaricom shared information with security agencies[159] and to further deter scrutiny.[160]

In another case, a 2024 investigation by the Daily Nation alleged that Safaricom unlawfully shared customers' location data with security agencies, potentially facilitating enforced disappearances and extrajudicial killings. Rather than directly responding to the allegations, the company reportedly threatened legal action against Nation Media Group and its journalists and later suspended advertising with the media house. After the Kenya Human Rights Commission (KHRC) and MUHURI called for accountability, Safaricom allegedly issued warnings demanding that the organizations cease public statements and remove related content from their social media platforms. KHRC and MUHURI rejected these demands, arguing that the actions amounted to Strategic Litigation Against Public Participation (SLAPP), intended to intimidate journalists and civil society actors and suppress public interest reporting on matters of significant public concern.[161]

Kenyan courts increasingly became important arenas for contesting SLAPP-related abuses. In *Standard Group PLC v Attorney General & 2 Others* [2024] eKLR and related media freedom litigation, courts reaffirmed constitutional protections for press freedom and cautioned against state actions that indirectly suppress independent journalism. Similarly, courts occasionally dismissed cases deemed frivolous, vexatious, or abusive of judicial process. As shown in this study, at least 52 cases were struck out or dismissed by courts during the analysis. However, the majority remained pending, thereby continuing to exert financial and psychological pressure on defendants despite the absence of final judgments.

The rise of SLAPP litigation in Kenya reflects broader patterns of judicialization of civic space, where legal institutions and court processes are increasingly utilized as instruments for regulating dissent and managing political contestation. Rather than relying exclusively on direct repression, state and non-state actors increasingly employ litigation, compliance procedures, regulatory penalties, and reputational claims to constrain civic actors within formally lawful frameworks. Scholars such as Bülent Algan and Ran Hirschl have described this phenomenon as the expansion of legal processes into political governance and civic contestation, where courts become central sites of power struggles over democratic participation.[162]

Ultimately, this study demonstrates that the increasing normalization of SLAPP suits poses serious implications for constitutional democracy, media freedom, and civic participation in Kenya. The absence of comprehensive anti-SLAPP legislation leaves journalists, activists, bloggers, and CSOs vulnerable to abusive litigation designed primarily to silence criticism rather than resolve legitimate disputes. Strengthening judicial safeguards, establishing early dismissal procedures, protecting public interest speech, and adopting anti-SLAPP legal frameworks remain essential to safeguarding civic space and democratic accountability in Kenya.

SLAPPs in Kenya are often characterized by their elitist nature, as they require substantial financial and legal resources that are typically available only to powerful state institutions and large corporations. These actors allegedly use costly and prolonged litigation to drain the resources of civil society organizations (CSOs), journalists, and human rights defenders, diverting them from advocacy and public interest work.[163] In response, Kenyan CSOs such as the Kenya Human Rights Commission (KHRC) and Muslims for Human Rights (MUHURI) have increasingly adopted data-driven advocacy by documenting human rights abuses and financial irregularities and using credible evidence to challenge SLAPP claims in both courts and the public domain.[164]

158 United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. Report on SLAPPs and Freedom of Expression, UN Doc. A/HRC/47/25, 2021.

159 See https://katibainstitute.org/katiba-institute-defends-a-kenyan-journalist-against-a-slapp-suit-by-safaricom/

160 Thomson Reuters Foundation (2025) Weaponising the Law: Threats to Media Freedom in Kenya Available at https://www.trust.org/wp-content/uploads/2026/02/TRF_Weaponising-the-Law_Kenya_20Feb.pdf

161 See https://khrc.or.ke/press-release/safaricom-must-immediately-cease-its-attacks-against-khrc-muhuri-daily-nation-and-journalists-and-answer-grave-allegations-against-it/

162 Hirschl, 2008

163 CIVICUS (2025). SLAPP Suits and Shrinking Civic Space in Kenya.

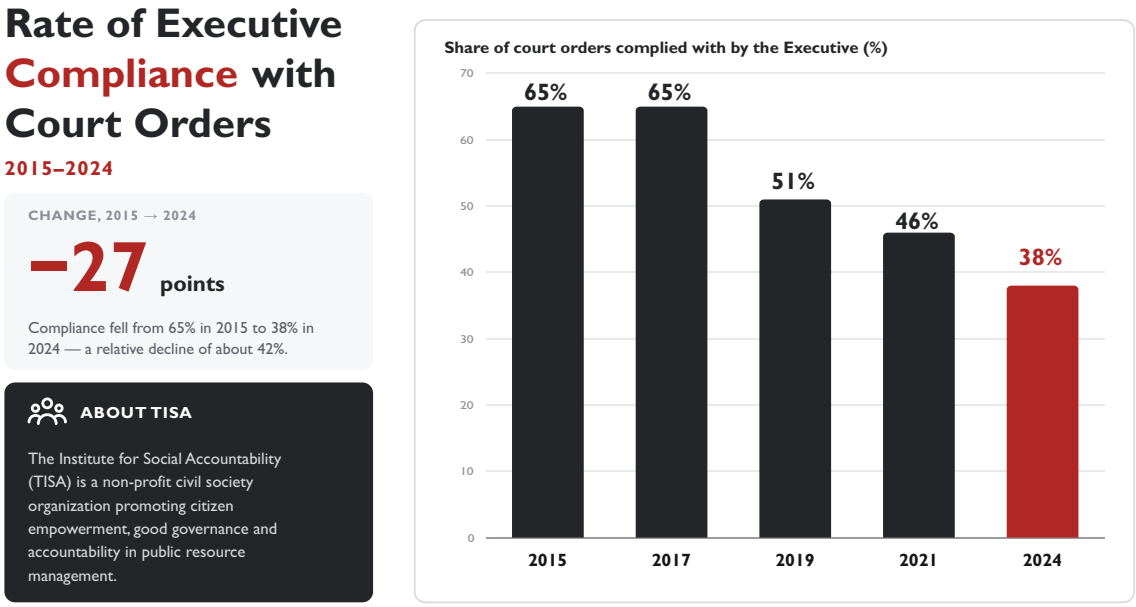
164 Kenya Human Rights Commission (2024). Annual Civic Space Report.

International solidarity has also emerged as a critical protective mechanism. Partnerships with global networks such as the International Network of Civil Liberties Organizations (INCLO) and Amnesty International have amplified international scrutiny, contributing to the withdrawal of high-profile defamation suits, including the case involving Kakuzi PLC.[165] Additionally, digital mobilization through social media campaigns has reframed SLAPPs as threats to democracy and civic space, reducing public support for their use and strengthening collective resistance against such tactics.

2.3.1.2 Compliance with Court Orders on Civic Space and Human Rights

a) The Executive

The question of compliance with court orders has become a critical indicator of the rule of law and the protection of civic space in Kenya. According to the People's Audit Report by the Institute for Social Accountability (TISA), executive compliance with court orders has steadily declined over the last decade, falling from approximately 65% in 2015 to 38% in 2024. The report points to an increasing pattern of delayed implementation, selective compliance, and outright disregard of judicial decisions by state actors.[166]



Source: People's Audit Report by The Institute for Social Accountability (TISA), released 8 December 2025; as illustrated by The Star (Kenya).

Figure 5: Court Order Compliance Rate by Executive (The Star)

This trend has been particularly visible in cases involving civic freedoms, including freedom of assembly, freedom of expression, enforced disappearances, police accountability, public participation, taxation, and governance reforms. The 2024 contempt proceedings against Acting Inspector General Gilbert Masengeli for repeatedly ignoring habeas corpus orders concerning missing activists highlighted growing tensions between judicial authority and executive agencies.

b) The National Police Service

From 2021 to 2026, litigation involving the National Police Service (NPS) in Kenya illustrates a transition from administrative and employment disputes to heightened constitutional scrutiny of policing practices. In 2021, cases such as *Maxwell Onduso v National Police Service*[167] and *Nehemiah Kipkorir Terer v NPSC*[168] primarily concerned employment rights and internal administrative processes, where courts either issued remedies for unlawful dismissal or struck out claims, reflecting relatively high compliance levels.

165 International Network of Civil Liberties Organizations (2021). Kakuzi PLC Case Study.

166 The Star (2025) Rate of Executive Compliance with Court Orders (2015-2024). Available at https://the-star.co.ke/news/infographics/2025-12-09-rate-of-executive-compliance-with-court-orders-2015-2024

167 Maxwell Onduso v National Police Service & 3 others [2021] KEELRC 1287 (KLR). Available at https://new.kenyalaw.org/akn/ke/judgment/keelrc/2021/1287/eng@2021-07-09

168 Nehemiah Kipkorir Terer & 3 others v National Police Service Commission & 2 others [2021] eKLR - Petition E024 of 2021. Available at https://sheriahub.com/cases/ke/caselaw/nehemiah-kipkorir-terer-3-others-v-national-police-service-commission-2-others-2021-eklr-zu2He

By 2023, the Supreme Court decision in *Dande v Inspector General, NPS* marked a doctrinal shift, clarifying that judicial review under the Constitution may extend to the merits of administrative action, thereby strengthening judicial oversight over police conduct.[169]

The period from 2024 onwards shows a rise in rights-based litigation. In *Maina v Inspector General*, the High Court declared arrest and prosecution unlawful, while Law Society of Kenya v Inspector General revealed compliance challenges when sanctions were imposed for failure to obey court orders.[170]

By 2025, cases such as *Katiba Institute v Inspector General*[171] and *Kanchory v NPS*[172] reflect growing judicial intervention in protest policing, with courts invalidating restrictive directives and condemning excessive use of force. Overall, the dataset demonstrates declining compliance in politically sensitive and rights-based cases, alongside expanding judicial control over police accountability.

Year	Case Name	Issue Area	Outcome / Orders	Compliance Indicator
2021	*Maxwell Onduso v National Police Service & others*	Employment / labour rights	Declared dismissal unconstitutional; remedies issued	High
2021	*Bandari Investment Co. Ltd v National Police Service*	Land dispute / policing duty	No breach found against police	High
2021	*Nehemiah Kipkorir Terer & others v NPSC & IG*	Promotions / administrative law	Petition struck out	High
2023	*Dande & others v Inspector General, NPS*	Judicial review / police powers	Appeal dismissed; clarified scope of review	Moderate
2024	*Muli v Inspector General of NPS*	Arrest and detention rights	Petition dismissed	Moderate
2024	*Maina v Inspector General of NPS*	Abuse of criminal process	Arrest declared unlawful; proceedings quashed	Moderate–High
2024	*Law Society of Kenya v Inspector General of Police*	Contempt / rule of law	IG sanctioned for failure to obey court orders	Low
2025	*Katiba Institute v Inspector General of Police*	Protest rights / public order	Police directive declared unconstitutional	Moderate
2025	*Kanchory v NPS & others*	Use of force / protest policing	Orders restricting unlawful use of force	Low–Moderate
2025	*Mwanza v NPSC & others*	Employment / unlawful dismissal	Court issued remedies and directions	Moderate

Dataset: Court Cases Involving the National Police Service (2021–2026)

c) Parliament

Kenyan courts have repeatedly issued orders against Parliament, but compliance has been inconsistent and often delayed. From 2021 to 2026, litigation involving Parliament of Kenya reflects an expanding pattern of judicial oversight over legislative processes, particularly in constitutional and fiscal matters. By 2022, cases such as *Mjengo Ltd & others v Parliament of Kenya* shifted focus toward direct constitutional challenges to legislation, demonstrating the willingness of courts to interrogate Parliament's lawmaking authority.[173] This trajectory intensified in 2024, with *Gikonyo & another v National Assembly & Senate & others*, where the High Court addressed the constitutionality of the NGCDF Act and revenue allocation,

169 Dande & 3 others v Inspector General, National Police Service & 5 others [2023] KESC 40 (KLR). Available at https://kenyalaw.org/akn/ke/judgment/kesc/2023/40/eng@2023-06-16

170 Maina v Inspector General of Police & 2 others [2025] KEELRC 3668 (KLR). Available at https://new.kenyalaw.org/akn/ke/judgment/keelrc/2025/3668/eng@2025-12-17

171 Katiba Institute v Inspector General of Police & another; Law Society of Kenya (Interested Party) [2025] KEHC 5240 (KLR). Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/5240/eng@2025-02-06

172 Kanchory v Service & 3 others; Law Society of Kenya & another (Interested Parties) [2025] KEHC 13792 (KLR). Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/13792/eng@2025-09-30

173 Mjengo Limited & 3 others v Parliament of Kenya & another [2022] KEHC 13517 (KLR). Available at https://kenyalaw.org/akn/ke/judgment/kehc/2022/13517/eng@2022-09-30

reinforcing the judiciary's role in policing the separation of powers.[174] Similarly, *Kenya Human Rights Commission & others v National Assembly & Senate* challenged the Affordable Housing Act, with petitioners seeking conservatory orders to halt its implementation on grounds of unconstitutional taxation and inadequate public participation.[175]

In 2025, *Katiba Institute v Parliament of Kenya* illustrates a contrasting outcome, where the petition was struck out on procedural grounds, reflecting higher compliance where courts do not mandate substantive legislative change.[176] Overall, the dataset indicates that while Parliament complies more readily with procedural rulings, compliance becomes more contested in cases involving major legislative reforms, particularly where fiscal policy and constitutional rights are implicated.

Year	Case Name	Court	Issue Area	Outcome / Orders	Compliance Indicator
2021	*Member of Parliament, Balambala Constituency v Abdi & others*	Supreme Court	Constitutional / electoral dispute involving MPs	Ruling delivered on constitutional issues	Moderate
2022	*Mjengo Ltd & others v Parliament of Kenya*	High Court	Constitutionality of legislation	Judgment delivered	Moderate
2024	*Gikonyo & another v National Assembly & Senate & others*	High Court	NGCDF Act, revenue allocation, separation of powers	Orders issued on constitutionality of statute	Moderate
2024	*Kenya Human Rights Commission & others v National Assembly & Senate*	High Court	Affordable Housing Act (taxation, public participation)	Conservatory orders sought to suspend Act	Low–Moderate
2025	*Katiba Institute v Parliament of the Republic of Kenya*	High Court	Constitutional petition (procedure / legislative review)	Petition struck out on preliminary objection	High
2026	*Muthomi & Karanja Advocates v Nairobi City County Assembly & another*	High Court (Judicial Review)	Legislative/assembly administrative action	Judicial review proceedings (orders pending/ruling)	Moderate

Dataset: Court Cases Involving Parliament of Kenya (2021–2026)

d) Communications Authority

From 2021 onwards, litigation involving the Communications Authority of Kenya (CAK) reflects a dual pattern of technical regulatory disputes and emerging constitutional challenges. In 2021, cases such as *Safaricom PLC v CAK*[177] before the Communications and Multimedia Appeals Tribunal demonstrate the predominance of interconnection and licensing disputes within the telecommunications sector. These cases typically resulted in partial or moderated relief, suggesting a relatively higher level of institutional compliance with tribunal decisions. Similarly, *Sauti Communications Ltd v CAK* reinforced this trend, with tribunal intervention resolving licensing issues without significant constitutional implications.[178]

174 Gikonyo & another v National Assembly of Kenya & 4 others; Council of Governors & 3 others (Interested Parties) [2024] KEHC 10886 (KLR). Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/10886/eng@2024-09-20

175 Kenya Human Rights Commission & another v Attorney General & another; Law Society of Kenya & another (Interested Parties) (Petition E179 of 2022) [2024] KEHC 15702 (KLR). Available at https://resources.tisa.co.ke/wp-content/uploads/2025/10/Kenya-Human-Rights-Commission-another-v-Attorney-General-another-Law-Society-of-Kenya-another-Interested-Parties-Petition-E179of2022-2024KEHC15702KLR-Constitutional-and-Human-Rights-13December202.pdf

176 Katiba Institute v Parliament of the Republic of Kenya & another [2025] KEHC 4609 (KLR). Available at https://kenyalaw.org/akn/ke/judgment/kehc/2025/4609/eng@2025-04-10

177 Safaricom PLC v Communications Authority of Kenya; Iristel Kenya Limited (Interested Party) Appeal No. 3 of 2021 [2022] KECMAT 24 (KLR) (11 March 2022). Available at https://www.jibudocs.com/public/summaries/2ee27b6b-95ba-773b-8b8c-ba17da83fe7?utm_source=chatgpt.com

178 Sauti Communications Limited v Communication Authority of Kenya [2026] KEHC 1210. Available at https://sheriahub.com/cases/ke/disputant/Communication+Authority+of+Kenya/1

By 2022 and 2023, cases such as *Azzuno Enterprises v CAK* and *Kandie v CAK* indicate continued engagement with administrative and employment matters, which tend to attract higher compliance due to their limited policy impact and clearer enforcement mechanisms.[179] However, a notable shift occurs in 2024, where onstitutional litigation intensifies. In *Kenya Union of Journalists v CAK*[180], the High Court declared aspects of the broadcasting code unconstitutional, albeit with a suspended order to allow regulatory adjustment. Similarly, *Katiba Institute v CAK* challenged the IMEI registration framework on privacy grounds, reflecting growing judicial scrutiny over digital governance.[181]

The 2025 decision in *Republic v Director General CAK* further underscores judicial willingness to quash administrative decisions through judicial review. Overall, while compliance remains relatively high in technical disputes, it declines in complex constitutional cases involving regulatory policy and fundamental rights.[182]

Year	Case Name	Court	Issue Area	Outcome / Orders	Compliance Indicator
2021	Safaricom PLC v CAK	Tribunal	Interconnection / licensing	Appeal partly allowed	Moderate–High
2021	Sauti Communications Ltd v CAK	Tribunal	Licensing dispute	Appeal allowed	Moderate
2022	Azzuno Enterprises v CAK	Tribunal	Licensing	Judgment issued	Moderate
2023	Kandie v CAK	ELRC	Employment	Ruling delivered	High
2024	Kenya Union of Journalists v CAK	High Court	Media regulation	Broadcasting code unconstitutional (suspended)	Moderate
2024	Katiba Institute v CAK (IMEI case)	High Court	Data protection / privacy	Policy contested; constitutional review	Low–Moderate
2025	Republic v Director General CAK	High Court	Judicial review	Decision quashed; prohibition orders issued	Moderate

Dataset: Court Cases Involving Communications Authority (2021–2026)

2.4 Politically Sponsored Goons and Bloggers: An Emerging Threat to Freedom of Expression and Dissent in Kenya

Between 2021 and 2026, Kenya witnessed the emergence of a hybrid ecosystem of politically sponsored criminal gangs, otherwise known as goons, and online influencers, bloggers, and troll networks deployed to shape political narratives, intimidate critics, and suppress dissent. While physical intimidation has long been a feature of Kenyan politics, recent years have seen an increasing convergence between online and offline methods of repression. Political actors have increasingly relied on informal networks rather than formal state institutions to influence public opinion, disrupt civic action, and discourage criticism of government policies. This trend has significant implications for the enjoyment of constitutional rights under Articles 33, 34, 36 and 37 of the Constitution, which guarantee freedom of expression, media freedom, association, and peaceful assembly.

2.4.1 Rise of Politically Sponsored Criminal Gangs (Goons)

One of the most visible trends since 2021 has been the deployment of politically motivated criminal gangs of young men to infiltrate, disrupt, or violently suppress civic action. Although political gangs have historically been associated with electoral violence, their role has evolved into broader civic space suppression.

179 Azzuno Enterprises v Communications Authority of Kenya, Appeal E001 of 2022, Communication and Multimedia Appeals Tribunal (2022). Available at https://www.bing.com/search?pglt=43&q

180 Kenya Union of Journalists v Communications Authority of Kenya & another; Media Council of Kenya (Interested Party) [2024] KEHC 13677 (KLR). Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/13677/eng@2024-11-07

181 Katiba Institute v Communications Authority of Kenya & 2 others; Data Privacy and Governance Society of Kenya & 3 others (Interested Parties); Ideate Policy Africa Limited (ITPA) (Amicus Curiae) [2025] KEHC 10568 (KLR) Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/10568/eng@2025-07-18

182 Republic & 2 others v Director General, Communication Authority Of Kenya & 2 others; Kenya Union of Journalists & 2 others (Interested Parties) [2025] KEHC 17496 (KLR). Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/17496/eng@2025-11-27

The trend became particularly pronounced during the 2024 Gen Z-led protests against the Finance Bill. Multiple reports documented the infiltration of otherwise peaceful demonstrations by criminal gangs accused of engaging in looting, violence, and intimidation. In July 2024, Acting Inspector General Douglas Kanja publicly stated that preliminary investigations indicated that some individuals had been hired and disguised as protesters to create chaos and loot in Nairobi, Roysambu, Pipeline, Kakamega, and other locations.[183] Similarly, Machakos Governor Wavinya Ndeti stated that hired goons infiltrated anti-Finance Bill demonstrations in Machakos, turning peaceful protests into violent incidents characterized by destruction of property and theft.[184]

The use of goons has continued beyond the Finance Bill protests. During commemorative demonstrations marking the anniversary of the 2024 protests in June 2025, reports emerged from Eldoret and other towns of baton-wielding gangs attacking peaceful demonstrators and disrupting public gatherings.[185] These incidents demonstrate an emerging pattern where violence is outsourced to non-state actors who operate with varying levels of political patronage while enjoying a degree of impunity.

2.4.2 Emergence of Politically Sponsored Bloggers and Troll Networks

Alongside physical intimidation, Kenya has experienced a significant growth in politically aligned digital actors. Political bloggers, influencers, and coordinated troll networks have increasingly become tools for shaping public opinion and attacking critics online.

Political communication has shifted substantially to social media platforms such as X, Facebook, TikTok, YouTube, and Instagram. While this has democratized access to information, it has also created opportunities for organized digital manipulation. Political actors increasingly recruit influencers and bloggers to amplify government narratives, discredit opponents, attack activists, and manufacture public support.

The 2024–2025 Gen Z protests revealed the extent to which digital spaces have become contested arenas. A 2025 report by Amnesty International documented what it described as technology-facilitated repression, including coordinated online harassment, disinformation campaigns, smear campaigns, intimidation, and targeted attacks against young activists who participated in anti-government protests. The report found evidence of coordinated efforts by state-aligned actors and online networks to suppress digitally organized dissent.[186] These networks often employ coordinated hashtags, misinformation, character assassination, and cyberbullying to delegitimize critics and create fear among citizens seeking to engage in political debate.

Impact on Offline Civic Action

The deployment of goons directly undermines the exercise of peaceful assembly and protest. Citizens who wish to participate in demonstrations increasingly face risks not only from police action but also from attacks by unidentified groups.

The infiltration of protests serves several functions. First, it creates fear among participants. Second, it delegitimizes genuine civic grievances by associating protests with violence and criminality. Third, it provides justification for increased security responses and restrictions on public gatherings.

As a result, many citizens may choose not to participate in demonstrations, public participation forums, or civic campaigns due to concerns for their safety. This creates a chilling effect on democratic participation and weakens the constitutional right to dissent.

Impact on Online Expression

The emergence of politically sponsored bloggers and troll networks has produced similar chilling effects in digital spaces. Activists, journalists, lawyers, and ordinary citizens who express critical views online increasingly face coordinated harassment campaigns.

Rather than engaging with substantive issues, online critics are often subjected to personal attacks, disinformation, doxxing threats, and reputational smears. Such campaigns seek to raise the social and psychological costs of political participation.

183 The Star. (2024). Goons Disguised as Protesters Were Hired to Cause Chaos on Tuesday – Acting IG Kanja. Available at https://www.the-star.co.ke/news/2024-07-24-goons-disguised-as-protesters-were-hired-to-cause-chaos-on-tuesday-acting-ig-kanja

184 Kenya News Agency. (2024). Goons Hired During Anti-Finance Bill Protests – Machakos Governor. Available at https://www.kenyanews.go.ke/goons-hired-during-anti-finance-bill-protests-machakos-governor/

185 See https://www.youtube.com/watch?v=QwdxHTRZQzc

186 Amnesty International Kenya. (2025). Authorities Weaponized Social Media and Digital Tools to Suppress Gen Z Protests. Available at https://www.amnesty.org/en/latest/news/2025/11/kenyan-weaponized-social-media-and-digital-tools-to-suppress-gen-z-protests/

The effect is particularly severe for young activists whose organizing largely occurs online. Amnesty International found that online threats, abusive messaging, targeted disinformation, and coordinated trolling became common features of Kenya's digital political environment during the Gen Z protests.

Consequently, many citizens resort to self-censorship, limiting their engagement in political discourse for fear of retaliation.

Escalating Risks for Bloggers and Digital Activists

The environment for bloggers and online commentators has become increasingly precarious. A 2025 report by the Bloggers Association of Kenya (BAKE), Article 19 Eastern Africa, and Paradigm Initiative documented a significant rise in arrests, abductions, harassment, surveillance, and deaths affecting bloggers and activists in 2024. The report concluded that bloggers face growing political, legal, and technological threats despite constitutional protections for free expression.[187]

A particularly concerning example was the death of blogger Albert Ojwang in police custody in 2025 after he had been arrested over social media content alleged to be defamatory. The case triggered nationwide outrage and renewed concerns about the safety of online critics and the criminalization of digital expression.[188]

Although the circumstances differ from organized trolling, the incident reinforced fears among digital activists that online criticism can expose individuals to serious risks.

187 Bloggers Association of Kenya (BAKE), Article 19 Eastern Africa & Paradigm Initiative. (2025). Devolved Impunity: The Safety and Security of Bloggers in Kenya (2019–2024). Available at https://blog.bake.co.ke/2025/03/19/new-report-highlights-rising-threats-to-bloggers-in-kenya/

188 Reuters. (2025). Kenya to Charge Police Officers with Murder Over Blogger's Death in Custody. Available at https://www.reuters.com/world/africa/kenya-charge-police-officers-with-murder-over-bloggers-death-custody-2025-06-23/

CHAPTER 3

LAWS AFFECTING THE EXERCISE OF THE FREEDOM OF ASSOCIATION

3.1 International and Regional Standards on the Freedom of Association

The freedom of association is guaranteed under Article 20 (2) of the Universal Declaration on Human Rights and Article 22 of the International Covenant on Civil and Political Rights (ICCPR). The only restrictions that may be placed on the exercise of this right are those "prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."[189] This article however precludes legal restrictions on the exercise of this right by members of the police and armed forces. The freedom of association is reaffirmed in the UN Declaration on "Human Rights Defenders" which recognizes the right "individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."[190] States have an obligation to adopt legal guarantees and administrative measures to ensure enjoyment of the right to association.[191] The ACHPR recognizes the right to free association subject to adherence to the law. This right includes the guarantee that no one may be compelled to join an association.[192] There are several other international treaties that recognize the right to associate.[193]

3.1.1 Definition of association

An association has been defined as a group of individuals or legal entities that come together to "collectively act, express, promote, pursue or defend a field of common interests." Forms of associations include "civil society organizations, clubs, cooperatives, non-governmental organizations (NGOs), religious associations, political parties, trade unions, foundations or online associations".[194] The minimum number of persons who can form an association is two persons.[195] Whereas the right to freedom of association is an individual right, it is asserted collectively once individuals come together to work towards a common goal. The freedom is therefore guaranteed simultaneously at an individual and group level. Legal registration is not a prerequisite for the protection of the right to freedom of association under international law; thus informal/unregistered associations have the same protection as legal entities. States therefore have an obligation not to compel associations to register in order to operate freely, neither should they be criminalized due to their informal status.

189 Article 22 ICPPR

190 Article 1, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereafter Declaration on Human Rights Defenders)

191 Article 2, Declaration on Human Rights Defenders

192 Article 11, ACHPR

193 Article 8 of the International Covenant on Economic, Social and Cultural Rights, Article 15 of the International Convention on the Rights of the Child, Article 7(c) of the Convention on the Elimination of All Forms of Discrimination Against Women, Article 26 and 40 of the International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families, Article 15 of the 1951 Convention Relating to the Status of Refugees, Article 24(7) of the International Convention for the Protection of All Persons from Enforced Disappearance, and Article 29 of the Convention on the Rights of Persons with Disabilities.

194 FOOA online! The right to peaceful assembly http://freeassembly.net/wp- content/uploads/2017/09/FOAA-Online-The-Right-to-Freedom-of-Peaceful-Assembly.pdf p.10

195 The Guidelines on Freedom of Assembly and Association (FOAA) in Africa https://www.achpr.org/presspublic/publication?id=22 Para.9

The right to freedom of association includes the right of associations to choose with whom to associate.[196] As provided by the Guidelines on FOAA in Africa; "the choice to exercise the right to freedom of association shall always be voluntary; individuals shall not be compelled to join associations, and shall always be free to leave them. Those founding and belonging to an association may choose whom to admit as members, subject to the prohibition on discrimination."

Under international law states have both a positive and negative obligation towards the promotion and protection freedom of association. The latter requires states not to interfere with the while the former requires facilitation of the exercise of the right. The measures taken by states must therefore ensure that an enabling environment is created for the exercise of the right and impediments such as threats and intimidation towards those exercising the right are prevented and investigated.

3.1.2 Limitations of freedom of association

Any restriction to the freedom of association must meet the three-pronged test in order to be permissible. Firstly, the limitation must be lawfully prescribed and not merely introduced through administrative orders or decrees. The test of legality also requires that the legal provisions limiting the freedom should not be overly broad and thus easily prone to misinterpretation. Secondly, the restriction must be made in pursuit of legitimate aims including; national security, public safety or public order, public health or morals, and to protect the rights and freedoms of others. The third test requires that the restriction should be necessary in a democracy; given the integral function of associations towards enhancing citizen participation in democratic processes, every restriction must be proportional to a pressing social need.It is noteworthy that the mandate of the Special Rapporteur on Protection of HRDs reiterates that any restrictions to human rights standards should meet a higher standard when applied to HRDs. Situations of national emergency for instance call for a greater enhancement on the ability to monitor and document security related violations rather than further suppressing the ability to defend human rights.

3.1.3 Registration of associations

Whereas it is a well-established principle in international law that the right to freedom of association protects both registered and non-registered groups, there is also recognition that registration or acquiring a legal personality may be a requirement under national law that enables benefits such as soliciting resources or owning property. Owing to this, states are required to facilitate the acquisition of legal personality to associations that elect to do so as this is a "core element" of the freedom of association. States that require authorization prior to registration should avoid bureaucratic procedures that result in delays and instead adopt best practices for "simple, non-onerous and expeditious" approvals. This conforms to the threshold recommended in the Africa Guidelines on FOAA that registration procedures should be simple, "clear, non-discriminatory and non- burdensome, without discretionary components."[28] Any limitations placed on a name chosen by an association during registration should meet the three-pronged test of legality, necessity and in pursuit of a legitimate aim.[29] The Africa Guidelines provide as follows;

> *The law shall not limit the names of associations, unless they are misleading, for instance due to resembling the names of other associations, or where they violate the prohibition of hate speech as defined by regional and international human rights law.*

The oversight of associations should ideally be conducted by a single state entity that executes this function in an impartial manner.[31] A best practice by civil society actors is the establishment of "independent self-governance standards" which serve to enhance transparency of their work.[32]

3.1.4 Access to resources

The right to freedom of association includes the right to mobilize resources, both human and financial.[33] Access to funding by human rights defenders is a core element of the right to freedom of association- this includes "the ability to solicit, receive and use funding" which enables human rights organizations to discharge their functions.[34] Requiring prior state authorization to receive international funding adversely affects the ability of human rights organizations to operate. Furthermore, governments should allow access to funding to these organizations as part of international cooperation to which these governments are also subject. [35] As provided by the Africa Guidelines on FOAA; Associations shall be able to seek and receive funds from local private sources, the national state, foreign states, international organizations, transnational donors and other external entities.

196 Note 11- FOOA online! p.28

States shall not require associations to obtain authorization prior to funding.[36] Legal frameworks and policies related to resources have a significant impact on the freedom of association; they can strengthen the effectiveness and facilitate the sustainability of associations or, alternatively, subjugate associations to a dependent and weak position.

3.1.5 Reporting requirements & Suspension of associations

Although it is recognized that transparency and accountability are legitimate aims for requiring associations to submit reports to state authorities, such reporting should not be arbitrary and burdensome.[37] Furthermore, the reporting requirements should presume the lawfulness of associations and their activities and not interfere with their internal management.[38] Failure to comply with reporting requirements under national law is not a sufficient ground to justify suspension or closure of an association.[39]

Suspension of associations is a grave restriction on the freedom of association and must therefore be subject to strict adherence to international human rights standards on proportionality and the pursuit of legitimate aims, such as national security, and be applied only as a last resort. [40] Additionally, suspension should only be done following a court order; the judgment on the suspension should be in conformity with regional and international human rights law.[41] Associations whose rights have been infringed should have access to a remedy; restitution shall include the right to be compensated for damages that occurred as a result of the infringement.[42] The right to access an effective remedy in the event of violation of the rights of individuals or associations promoting and protecting of human rights, is recognized in the UN Declaration on HRDs.

3.2 National Intelligence Service Act, 2012

The main purpose of this legislation is to provide for the functions, organization and administration of the National Intelligence Service pursuant to Article 239(6) of the Constitution; to give effect to Article 242(2) and other relevant provisions of the Constitution; to provide for the establishment of oversight bodies and for connected purposes. The provisions of this legislation mainly apply to members of the National Intelligence Service. These are public officers not known to be active members of civil society organizations. Nevertheless, it is worth stating that since the dark days of the reign of President Moi, it was suspected and feared that some intelligence officers had been strategically planted by the government within civil society to gather reliable information and influence the activities in the sector.

3.2.1 Provisions Affecting Freedom of Association

Sections 38 and 40 of the Act limit the rights guaranteed under Articles 36 and 41 of the Constitution. Section 38 prohibits members of the Service from joining or participating in the activities of associations, except professional associations, while Section 40 bars them from forming, joining, or participating in trade unions and from engaging in strikes. These limitations are justified under Section 32 of the Act as necessary for maintaining discipline, operational effectiveness, confidentiality, and national security.

The restrictions reflect a broader international practice whereby members of security and intelligence agencies are subject to limitations on certain civil and political rights. Scholars have argued that such restrictions are permissible where they are lawful, necessary, proportionate, and subject to oversight mechanisms.[197]

Although no major court decision has directly invalidated Sections 38 or 40 of the National Intelligence Service Act, Kenyan courts have consistently emphasized that limitations on fundamental rights must satisfy the proportionality test under Article 24 of the Constitution. In *Katiba Institute v President of the Republic of Kenya & Others* (2020), the High Court reaffirmed that national security measures must remain subject to constitutional scrutiny and cannot override fundamental rights without lawful justification. Similarly, courts reviewing provisions of the Security Laws (Amendment) Act, 2014 stressed that national security concerns must be balanced against constitutional freedoms and democratic accountability.

Recent public debate has also intensified regarding the accountability of intelligence agencies following allegations of enforced disappearances and unlawful surveillance during the 2024–2025 protest period. Civil society organizations have called for stronger parliamentary and judicial oversight of intelligence operations to ensure compliance with constitutional safeguards and human rights standards.[198]

197 Heyns, C., & Killander, M. (2010). Compendium of Key Human Rights Documents of the African Union. Pretoria University Law Press.
198 Amnesty International. (2025). Kenya: Human rights concerns arising from enforced disappearances and security operations.

3.2.2 Extent of Compliance with International Human Rights Law

The International Covenant on Civil and Political Rights permits the lawful restriction of the freedom of association in respect of armed forces and the police.[46] These are disciplined security services responsible for matters relating to national security. Although intelligence agencies have not been expressly mentioned in the Covenant, it is logical to presume that the intention was to include them, as they are disciplined security services that are armed and responsible for matters relating to national security. Unlike the ICCPR, the African Charter on Human and Peoples' Rights does not make specific reference to the limitation of the freedom of association in respect of armed forces, the police, intelligence agencies or any security forces.

3.2.3 Challenges and Impact on Civic Space

Allegations of surveillance, infiltration of civic movements, and enforced disappearances have heightened public concern over the role of intelligence agencies in civic space. Effective oversight by Parliament, the Judiciary, the Intelligence Service Complaints Board, and the Kenya National Commission on Human Rights remains essential to prevent abuse and maintain public trust.

3.3 Trustees (Perpetual Succession) Act and Trustees (Perpetual Succession) (Amendment) Act, 2021 (Act No. 13 of 2021)

The main purpose of this legislation is to provide for the incorporation of any group of trustees into a legal personality with perpetual succession to property. It is noteworthy that this legislation differs from the Trustee Act, which concerns trustees in their individual capacity. Various civil society organizations have opted to be registered as trusts instead of non-governmental organizations. The Trustees (Perpetual Succession) Act is a pre-independence legislation that has been amended several times over the years, with the latest amendments made in the late 1980's.

The Trustees (Perpetual Succession) (Amendment) Act, 2021 was enacted to modernize Kenya's trust law by introducing a comprehensive framework for the establishment, registration, administration, and enforcement of trusts. The Act amended the Trustees (Perpetual Succession) Act (Cap. 164) and came into force on 23 December 2021. Its principal objective was to provide legal certainty for family trusts, charitable trusts, and non-charitable purpose trusts, while strengthening the governance and accountability of trustees.

3.3.1 Provisions Affecting Freedom of Association

The Constitution of Kenya provides that legislation limiting a right or fundamental freedom shall not be construed as limiting it unless the provision is clear and specific about the right or fundamental freedom to be limited and the nature and extent of the limitation.

Section 2 provides that the Registrar shall, within sixty days of receipt of an application for the incorporation of a trust, grant or reject the application.

Section 2A further provides that, where an application is rejected, the Registrar shall give the applicant written notice stating the reason for the rejection.

The principal provisions governing incorporation are set out in Section 3, which empowers the Cabinet Secretary to grant a certificate of incorporation to the trustees of any association established for religious, educational, literary, scientific, social, athletic, charitable, or other lawful purposes. Upon incorporation, the trustees become a body corporate with perpetual succession and a common seal.

Section 4 provides that incorporated trustees shall have perpetual succession and may sue and be sued in their corporate name.

Section 7 empowers incorporated trustees to acquire, purchase, exchange, lease, and hold movable and immovable property for the purposes of the trust.

Section 8 authorizes incorporated trustees to transfer, convey, assign, surrender, and dispose of property vested in them, subject to the provisions of the trust and applicable law.

While these provisions facilitate the exercise of associational rights, the Act also grants administrative authority to government officials for the incorporation and amendment of trust instruments. Concerns have occasionally been raised regarding delays, bureaucratic discretion, and regulatory requirements that may affect the operational autonomy of civil society organizations and faith-based entities.

Scholars have observed that registration and incorporation requirements should not be applied in a manner that unnecessarily restricts associational freedoms or organizational independence.[199]

The most significant recent reform was introduced through the Trustees (Perpetual Succession) (Amendment) Act, 2021 (Act No. 13 of 2021), which introduced several new provisions, including:

> *Sections 3B and 3C, which establish the legal framework for charitable trusts and specify the purposes for which charitable trusts may be created;*
>
> *Section 3E, which provides that a trust shall generally be irrevocable unless the trust instrument expressly reserves a power of revocation.*

The Act has also undergone periodic revisions through the *24th Annual Supplement (2022) and the Statute Law (Miscellaneous Amendments) Act, 2024*, although these revisions did not substantially alter its core framework relating to incorporation of trustees.

In *African Inland Church Kenya Trustees Registered v Attorney General & Others*, the courts emphasized compliance with Article 47 of the Constitution and the Fair Administrative Action Act, particularly where administrative decisions affect the registration, governance, or management of incorporated trustees.[200]

3.3.2 Extent of Compliance with International Human Rights Law

The Act is generally consistent with Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the African Charter on Human and Peoples' Rights, both of which protect freedom of association. By providing a legal mechanism through which associations may acquire corporate status and manage property, the Act facilitates the exercise of associational rights.

3.3.3 Challenges and Impact on Civic Space

Despite its facilitative role, challenges remain regarding administrative delays in registration, amendments to trust deeds, and approval of changes in trusteeship.

Civil society organizations and faith-based institutions have occasionally reported difficulties in obtaining timely approvals from relevant authorities. Concerns have also emerged regarding potential state oversight mechanisms that could indirectly affect organizational independence and civic space.

The introduction of family trusts under Section 3A has significantly expanded opportunities for succession planning and asset protection. Similarly, the recognition of charitable trusts under Sections 3B and 3C has strengthened the legal framework for philanthropic and public-benefit organizations.

Nevertheless, delays in processing applications and amendments may undermine the effectiveness of the Act in facilitating civic participation and organizational development.

3.4 Societies Act

The purpose of the Societies Act is to make provision for the registration, regulation, and control of societies in Kenya. The legislation establishes the legal framework governing the formation, registration, operation, and regulation of associations and societies operating within the country.

3.4.1 Provisions Affecting Freedom of Association

The Societies Act significantly affects the enjoyment of freedom of association by imposing mandatory registration requirements on associations and criminalizing unregistered societies. Section 2 of the Act defines a society as:

> *"Any club, company, partnership or other association of ten or more persons, whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya, and any branch of a society."*

This provision establishes a minimum threshold of 10 persons for an association to qualify as a society under the law.

199 Kiai, M. (2017). "Freedom of Association and Civil Society Regulation in Africa." African Human Rights Law Journal, 17(2), 365–389.

200 Africa Inland Church Kenya (Trustees Registered) & another v Enyang & 2 others (Environment and Land Case 46 of 2013 & 5 of 2015 (Consolidated)) [2025] KEELC 5895 (KLR) (31 July 2025). Available at https://new.kenyalaw.org/akn/ke/judgment/keelc/2025/5895/eng@2025-07-31

The Act requires every society operating in Kenya to register or obtain exemption from registration. Section 4 empowers the Cabinet Secretary to declare certain societies unlawful where they are considered dangerous to peace, public order, or good governance. Membership in an unlawful society constitutes a criminal offence.

Section 9 requires societies to apply for registration within 28 days of formation, while Section 11 grants the Registrar of Societies the authority to refuse registration on various grounds, including where the Registrar considers a society incompatible with peace, welfare, or good order in Kenya.

Section 12 empowers the Registrar to cancel or suspend the registration of a society where it is deemed to have violated the Act or acted contrary to its objectives. These provisions confer broad discretionary powers on the Registrar and have historically raised concerns about administrative overreach and potential restrictions on civic participation.

Sections 18–20 further regulate amendments to society constitutions, office bearers, and governance structures by requiring notification to and approval from the Registrar.

Scholars have argued that broad registration requirements and discretionary powers vested in regulatory authorities may undermine associational autonomy in the absence of adequate safeguards against arbitrary decision-making.[201]

Kenyan courts have increasingly subjected decisions of the Registrar of Societies to constitutional scrutiny. In *Republic v Registrar of Societies ex parte Alice Nafula Wanyama & Others* (2024), the High Court examined the cancellation of a church's registration and emphasized that the Registrar's powers must be exercised in accordance with the Constitution and principles of fair administrative action under Article 47.[202]

In *Judicial Review E036 of 2024 (SUPKEM Case)*, the High Court considered allegations that the Registrar of Societies acted arbitrarily in recognizing office bearers without according affected parties a hearing. The case reaffirmed that administrative decisions affecting registered societies must comply with constitutional standards of procedural fairness.[203]

More recently, in *M'Ikunyua & Another v Registrar of Societies (2025)*[204] and *Kaigi & Others v Registrar of Societies (2025)*[205], the High Court reaffirmed that the Registrar's decisions concerning society constitutions, elections, and office bearers are subject to judicial review and must comply with statutory and constitutional requirements.

3.4.2 Extent of Compliance with International Human Rights Law

The definition of a society under Section 2 of the Societies Act generally aligns with the broad understanding of associations under the African Commission on Human and Peoples' Rights (ACHPR) Guidelines on Freedom of Association and Assembly in Africa (2017). However, several provisions of the Act remain inconsistent with regional and international human rights standards on freedom of association. First, the ACHPR Guidelines provide that:

> *"No more than two persons shall be required in order to found an association."*

In contrast, Section 2 of the Societies Act requires a minimum of ten persons to establish a society. This threshold creates unnecessary barriers to organizing, particularly for grassroots initiatives, minority groups, emerging movements, and community-based organizations. Second, the ACHPR Guidelines provide that:

> *"States shall not compel associations to register in order to be allowed to exist and to operate freely."*

The Guidelines further provide that:

> *"Informal (de facto) associations shall not be punished or criminalized under the law or in practice on the basis of their lack of formal (de jure) status."*

201 Kiai, M. (2017). "Freedom of Association and Civil Society Regulation in Africa." African Human Rights Law Journal, 17(2), 365–389.

202 Republic v Registrar of Societies ex parte Alice Nafula Wanyama & Others, Judicial Review Application E117 of 2023 [2024] KLR.

203 Naado & 6 others (All Applicants Suing as Officials of Supreme Council 0f Kenya Muslism (SUPKEM)- Ex Parte Applicants) v Registrar of Societies; Nzibo & another (Interested Parties) [2024] KEHC 1819 (KLR). Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/1819/eng@2024-02-27

204 M'Ikunyua & another v Registrar of Societies; Wanyoike & 5 others (Interested Parties) [2025] KEHC 12048 (KLR). Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/12048/eng@2025-08-15

205 Kaigi & 4 others v Registrar of Societies; Mugo & 3 others (Interested Parties) [2025] KEHC 10765 (KLR) Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/10765/eng@2025-07-23

Conversely, Sections 4 and 6 of the Societies Act declare unregistered societies unlawful and prohibit their operation. This effectively criminalizes informal associations and undermines the right to freely associate outside state-controlled registration systems. Third, the ACHPR Guidelines provide that:

> *"Registration shall be governed by a notification rather than an authorization regime, such that legal status is presumed upon receipt of notification."*

However, the Societies Act adopts an authorization regime where associations can only legally operate upon approval by the Registrar of Societies. This grants excessive discretionary authority to the state and creates opportunities for arbitrary refusal, selective registration, and politically motivated restrictions.

Further, the broad powers granted to the Registrar under Sections 11 and 12 of the Act are susceptible to abuse due to vague terms such as "peace," "welfare," and "good order."15 Such provisions fail to meet the constitutional threshold of legality, necessity, and proportionality under Article 24 of the Constitution of Kenya.

The Act also undermines Article 36(1) of the Constitution of Kenya, which provides that:

> *"Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind."*

3.4.3 Challenges and Impact of Civic Space

It is a well-known fact that civil society organizations and networks in Kenya opt to organize themselves in an informal framework to advance causes that are unpalatable to the state. The avoidance of oppressive regulatory frameworks is meant to guarantee the freedom to promote the agenda in question without muzzling and intimidation by the state. It is also designed to accommodate non-state actors who wish to temporarily engage in the cause at hand without being bogged down by the financial burden and administrative rigors of managing a formal institution, Historically, CSO's advocating for a multi-party democracy and constitutional reform organized themselves in informal groups constituting concerned individuals, registered institutions and unregistered groups. Examples of these include the *Ufungamano Group, Bunge la Wananchi, The Yellow Movement* and *We the People*. Outlawing unregistered associations of human rights defenders constrains civic space by interfering with these groups' freedom of association.

3.5 Prevention of Terrorism Act (POTA)

The Prevention of Terrorism Act was enacted to provide measures to detect, prevent, and punish terrorist activities in Kenya. The legislation forms part of Kenya's broader national security framework aimed at combating terrorism and violent extremism. While the Act pursues legitimate security objectives, several of its provisions have raised constitutional and human rights concerns, particularly regarding their impact on freedom of expression, media freedom, privacy, and civic space.

3.5.1 Provisions Affecting Freedom of Association

Although much of the criticism surrounding the Prevention of Terrorism Act (POTA) has focused on freedom of expression, several provisions also have implications for the enjoyment of freedom of association, particularly in relation to civil society organizations, religious groups, and organizations involved in countering violent extremism. The legislation grants extensive powers to the state in regulating organizations and activities associated with terrorism prevention and counterterrorism operations.

One of the most significant provisions affecting freedom of association is Section 40C of the Prevention of Terrorism Act. The section requires individuals and organizations engaged in activities aimed at preventing or countering violent extremism to seek approval from and report to the National Counter Terrorism Centre (NCTC).

The provision has significant implications for civil society organizations, community-based organizations, faith-based organizations, and non-governmental organizations involved in peacebuilding, human rights advocacy, civic education, and countering violent extremism programs. Critics argue that mandatory registration, approval, and reporting obligations create excessive state control over associational activities and may discourage organizations from engaging in legitimate civic work.[206]

206 International Center for Not-for-Profit Law (ICNL). (2023). Civic Freedom Monitor: Kenya.

Concerns have also been raised that the broad discretion granted to state authorities may facilitate surveillance, interference, or intimidation of organizations operating in sensitive security-related sectors. This may undermine the constitutional guarantee of freedom of association under Article 36 of the Constitution of Kenya, which protects the right of every person to form, join, or participate in the activities of an association.

Section 40C was challenged before the High Court in *Humanity Action Knowledge Integrity in Africa Trust & 19 Others v Attorney General & Others* [2024] eKLR. The petitioners argued that the provision violated constitutional rights and freedoms, including freedom of association, freedom of assembly, freedom of expression, and the right to privacy. The petitioners further contended that the amendments introducing Section 40C were enacted without adequate public participation and that the requirement for approval by the National Counter Terrorism Centre imposed unreasonable and disproportionate restrictions on civil society organizations.

In its decision, the High Court upheld the constitutionality of Section 40C, finding that the state had a legitimate interest in regulating activities relating to countering violent extremism and terrorism prevention. However, the Court emphasized that any limitations imposed under the provision must remain consistent with constitutional standards of legality, necessity, and proportionality.[207]

The judgment highlighted the continuing challenge of balancing national security objectives with constitutional freedoms in Kenya. While the Court accepted the government's security concerns, civil society organizations remained concerned that the provision could still facilitate indirect restrictions on associational freedom through administrative control and surveillance.

Despite the invalidity of Sections 30A and 30F, the Prevention of Terrorism Act continues to contain provisions that permit the limitation of certain constitutional rights under Section 35. The section provides that rights may be limited for purposes of ensuring the investigation, detection, and prevention of terrorist acts, and to ensure that the enjoyment of rights by one individual does not prejudice the rights and freedoms of others.

The rights subject to limitation include:

- The right to privacy;
- Rights of arrested persons;
- Freedom of expression and media freedom;
- Freedom of conscience, religion, belief, and opinion;
- Freedom and security of the person;
- The right to property; and
- Freedom of association and assembly in contexts relating to counterterrorism regulation.

Although the Act primarily references limitations on expression and security-related rights, the implementation of provisions such as Section 40C directly affects associational freedoms by subjecting organizations involved in countering violent extremism to state oversight and approval mechanisms.

Under Article 24 of the Constitution of Kenya, any limitation of rights must be reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom. Critics argue that broad regulatory and supervisory powers under POTA risk exceeding these constitutional limits if applied arbitrarily or disproportionately.[208]

Concerns remain that the broad powers granted under Section 35 may facilitate excessive restrictions on civil liberties if not subjected to adequate judicial oversight and accountability mechanisms.

3.5.2 Extent of Compliance with International Human Rights Law

Kenya's counterterrorism framework has attracted scrutiny from international and regional human rights bodies regarding its compatibility with freedom of association and civic participation.

The African Commission on Human and Peoples' Rights has consistently emphasized that counterterrorism measures must comply with obligations under the instrument including protections for freedom of association, assembly, and expression.

207 Humanity Action Knowledge Integrity in Africa Trust & 19 Others v Attorney General & Others [2024] eKLR. Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2020/9598/eng@2020-04-29

208 Muigai, G. (2022). Counterterrorism and constitutionalism in Kenya. Nairobi: LawAfrica Publishing.

Similarly, Article 22 of the International Covenant on Civil and Political Rights guarantees the right to freedom of association, subject only to restrictions that are prescribed by law and necessary in a democratic society in the interests of national security, public safety, public order, or the protection of the rights and freedoms of others.

International human rights bodies have cautioned that counterterrorism legislation should not be used to unduly restrict the work of civil society organizations or human rights defenders. Excessive registration requirements, mandatory reporting obligations, and broad executive discretion may undermine civic participation and create a chilling effect on legitimate associational activities.[209]

The regulatory framework established under Section 40C therefore raises important questions regarding whether the restrictions imposed are proportionate and necessary within the meaning of international human rights law.

3.5.3 Challenges and Impact on Civic Space

The implementation of counterterrorism legislation in Kenya has had a significant impact on civic space and the work of civil society organizations. Organizations involved in peacebuilding, community mobilization, religious engagement, humanitarian work, and countering violent extremism frequently operate within highly securitized environments.

The requirement for organizations to seek approval from the National Counter Terrorism Centre has raised concerns regarding administrative control over civic activity. Civil society actors fear that the approval process may be used selectively to restrict organizations perceived as critical of government policies or security operations.

There are also concerns that heightened surveillance and reporting obligations may discourage community organizations and grassroots movements from participating in programs relating to peacebuilding and human rights advocacy. This creates a chilling effect on associational freedoms and weakens civic participation in democratic governance.[210]

Although the High Court upheld Section 40C, debate continues regarding the practical implications of the provision and the extent to which it may facilitate indirect restrictions on freedom of association. Human rights organizations have emphasized the need for clear safeguards, transparency, and independent oversight to prevent abuse of counterterrorism powers.[211]

The continued tension between national security objectives and civic freedoms underscores the importance of ensuring that counterterrorism measures do not undermine the legitimate work of civil society organizations and human rights defenders.

3.6 Kenya Citizenship and Immigration Act, 2011

The purpose of this legislation is to provide for matters relating to citizenship, issuance of travel documents and immigration. Some of its provisions should be read together with a related statute titled "the Kenya Citizens and Foreign Nationals Management Service Act, 2011".

3.6.1 Provisions Affecting Freedom of Association

The Kenya Citizenship and Immigration provides that "a person who was a citizen of Kenya by birth and who ceased to be a citizen of Kenya because he or she acquired the citizenship of another country may apply in the prescribed manner, to the Cabinet Secretary to regain Kenyan citizenship"[81]. The only requirements are the proof of the applicant's previous Kenyan citizenship and proof of the citizenship of the other country. Subsequently, the Cabinet Secretary should cause the application to be registered and issue the applicant a certificate of citizenship registration. This means that a person who acquired Kenyan citizenship by birth when dual citizenship was not permitted by law cannot automatically regain it. There has to be a formal application.

In light of the above, a person who had lost his citizenship by acquiring the citizenship of another country before the promulgation of the Constitution of Kenya in 2010 and the commencement of this legislation, would be regarded as a foreign officer who requires a work permit and an alien identification card if such person intends to form or be appointed as an officer of any organization in Kenya.

209 United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism. (2020). Human rights impact of counterterrorism measures on civil society. Available at https://digitallibrary.un.org/record/3885990?v=pdf

210 ICNL, 2023

211 Amnesty International Kenya. (2022). Counterterrorism measures and civic space in Kenya.

If the person fails to acquire requisite documentation, such person would have committed an offence under the legislation.

The legislation provides for revocation of citizenship by the Cabinet Secretary in accordance with the Constitution[82]. Such a decision would result in the loss of rights of a citizen including "the right to enter, exit, remain in and reside anywhere in Kenya"[83] and effectively terminate the legality of holding an office in an organization in Kenya as a citizen thereby requiring such person to apply a work permit as a foreign worker. An appeal to this decision can be made to the High Court and subsequently to the Court of Appeal and the Supreme Court.

The legislation provides that a person's residence permit or work permit can be revoked where such a person:

a) fails, without the written approval of the Director, to engage within ninety days of the date of issue of the permit or of that person's entry into Kenya, whichever is the earlier, in the employment, occupation, trade, business or profession in respect of which the permit was issued or take up residence;
b) ceases to engage in the said employment, occupation, trade, business or profession; or
c) engages in any employment, occupation, trade business or profession, whether or not for remuneration or profit, other than the employment, occupation, trade, business or profession in respect of which the permit was issued;
d) has violated any of the terms of his or her stay under the permit;
e) has violated any of the provisions of this Act or Regulations made under it;
f) has been declared a prohibited immigrant or inadmissible person;
g) has become an undesirable immigrant;
h) acquired the permit by fraud, false representation or concealment of any material fact;
i) has during any war in which Kenya was engaged unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was knowingly carried on in such a manner as to assist an enemy in that war; and
j) the person has after acquiring the permit been convicted of an offence and sentenced to imprisonment for a term of three years or longer"[84]

This renders the presence of such a person in Kenya unlawful unless otherwise permitted by law. The legislation gives the Cabinet Secretary power to issue an order for the removal of a person whose presence in Kenya becomes unlawful and that person can be removed indefinitely or for such period as may be specified in the order.[212]

3.6.2 Extent of Compliance with International Human Rights Law

In general, this legislation contains no provisions that conflict with international human rights law. However, in practice, the Cabinet Secretary's authority to expel non- citizens and declare them inadmissible persons[86] in Kenya has been invoked to limit the freedom of association of foreign human rights defenders. This practice existed before the enactment of this legislation.

Challenges and Impact on Civic Space

Although the Cabinet Secretary's powers and those of the Department of Immigration under this legislation are subject to review by the High Court, the government has refused to comply with the orders of the court.

3.7 Labour Relations Act, 2007

The purpose of this legislation is to consolidate the law relating to trade unions and trade disputes, to provide for the registration, regulation, management and democratization of trade unions and employers organizations or federations, to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development.

212 Section 43

3.7.1 Provisions Affecting Freedom of Association

The legislation guarantees employees' right to freedom of association. Every employee has the right to participate in forming a trade union or federation of trade unions; join a trade union or leave a trade union. The Act also provides that "every member of a trade union has the right, subject to the constitution of that trade union, to

a) *participate in its lawful activities;*
b) *participate in the election of its officials and representatives;*
c) *stand for election and be eligible for appointment as an officer or official and, if elected or appointed, to hold office; and*
d) *stand for election or seek for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in accordance with the provisions of this Act or a collective agreement."*[213]

Further, the legislation provides that "every member of a trade union that is a member of a federation of trade unions has the right, subject to the constitution of that federation to -

a) *Participate in its lawful activities;*
b) *Participate in the election of any of its office bearers or officials; and*
c) *Stand for election or seek for appointment as an office bearer or official and, if elected or appointed, to hold office.*[214]

The legislation also guarantees the rights to freedom of association of **employers**. It provides that "every employer has the right to -

a) *Participate in forming an employers' organization or a federation of employers organizations; and*
b) *Subject to its constitution, join an employers organization or a federation of employers' organizations."*[215]

The right to freedom of association is also enjoyed by trade unions. The legislation provides that "every trade union, employers' organization or federation has the right to -

a) *Subject to the provisions of this Act -*
    - determine its own constitution and rules; and
    - hold elections to elect its officers;
b) *plan and organize its administration and lawful activities;*
c) *participate in forming a federation of trade unions or a federation of employers organizations;*
d) *join a federation of trade unions or a federation of employers organizations, subject to its constitution, and to participate in its lawful activities; and*
e) *affiliate with, and to participate in the affairs of any international workers organization or international employers' organization or the international labour organization, and to contribute or receive financial assistance from those organizations."*[216]

The legislation gives the Registrar of Trade Unions the authority to withdraw a certificate of registration where he believes that "any person has undertaken an unlawful activity, whether in contravention of this Act or any other law, on behalf of the proposed trade union or employers' organization."[92] This is an overbroad provision which can be abused.

The Act provides for the amalgamation of trade unions, employers organizations or federations.[217]

The legislation gives the Registrar the authority to cancel or suspend the registration of a trade union, employers' organization or federation where "he is satisfied that it: Was registered as a result of fraud, misrepresentation or mistake;

a) *Is operating in contravention of this Act;*
b) *Is being used for an unlawful purpose;*
c) *Has failed to conduct elections in accordance with the requirements of this Act; or*
d) *Is not independent."*
e) *Any person aggrieved by the decision of the Registrar under the Labour Relations Act has a right of appeal to the Industrial Court.*[218]

213 Section 4(2)
214 Section 4(3)
215 Section 2
216 Section 8
217 Section 26
218 Section 30

The legislation provides that "no person shall be an official of more than one trade union or employer's organization." The rationale behind this is not substantiated in the Act. In an era where a person can belong to more than one profession/sector, this is an unjustified limitation of the right to freedom of association.[219]

The legislation provides that "no person who has been convicted of a criminal offence involving fraud or dishonesty shall be an official of a trade union or employer's organization."[220]

3.7.2 Extent of Compliance with International Human Rights Law

Neither the ICCPR nor the ACHPR Guidelines bar individuals from being members of more than one association. The limitation of people from being members of more than one union or employers' organization under section 31 of the Labour Relations Act goes against the spirit of regional and international standards.

Challenges and Impact on Civic Space

In today's world, there are persons who have acquired qualifications that permit them to serve in more than one profession and can serve in both at the same time. This means that they should have a right to be a member of all trade union that caters to the respective professions that he is qualified to serve in to ensure his interests are catered for adequately. Any legal limitation of this liberty is an infringement on the person's freedom of association. It is a constricted worldview of the modern day reality that should be remedied.

3.8 Companies Act, 2015

The Companies Act, 2015 was enacted to consolidate and reform the law relating to the incorporation, registration, operation, management, and regulation of companies in Kenya. The Act repealed the Companies Act (Cap. 486) and introduced a modern corporate governance framework aligned with the Constitution of Kenya, 2010 and international best practices. The Act provides for the formation of private and public companies, companies limited by shares, companies limited by guarantee, and unlimited companies. It also establishes procedures for registration, management, accountability, and dissolution of companies.

Although primarily a commercial statute, the Act has implications for the exercise of the freedom of association under Article 36 of the Constitution because a company is a recognized form of association through which individuals collectively pursue lawful economic, social, charitable, educational, or public-interest objectives.[221]

3.8.1 Provisions Affecting Freedom of Association

Section 13 sets out the documents required for company registration, while Sections 17 and 18 require the Registrar to register a company and issue a certificate of incorporation once the statutory requirements have been satisfied. These provisions give effect to Article 36(3)(a) of the Constitution, which guarantees every person the right to form, join, and participate in the activities of an association.

The Act recognizes various forms of association, including companies limited by guarantee, which are commonly used by non-profit organizations, professional bodies, educational institutions, and charitable entities. This expands the legal options available to individuals wishing to organize collectively for lawful purposes.

The Act limits the registration and continuance of business of foreign companies in Kenya through a mandatory requirement that such a company appoints a local representative. Where a foreign company operates 21 days after the local representative(s) leave, such operation constitutes an offence.[222]

However, the Act grants regulatory powers to the Registrar of Companies, including powers relating to registration, maintenance of company records, rectification of company registers, and enforcement of compliance. While these powers serve legitimate regulatory objectives, they may affect associational rights if exercised arbitrarily or without procedural safeguards.

219 Section 31(2)
220 Section 31(5)
221 Section 2
222 Section 979

Fortunately, in *Suyian Holdings Limited & 2 Others v Registrar of Companies (Civil Appeal No. 145 of 2015)*, the Court of Appeal held that the right to freedom of association under Article 36 extends to the formation and registration of companies. The Court emphasized that registration may not be withheld unreasonably and that decisions of the Registrar of Companies must comply with constitutional standards of fairness, legality, and proportionality. The judgment affirmed that incorporation of a company constitutes a protected form of association under the Constitution.

More recently, in *Republic v Registrar of Companies (Business Registration Service); Rotich & 4 Others (Ex Parte Applicants); Komen (Interested Party) [2024] KEHC 11990 (KLR)*[223], the High Court quashed a decision of the Registrar that altered the directorship and shareholding structure of a company. The Court held that the Registrar's powers under the Companies Act must be exercised in accordance with Article 47 of the Constitution and the Fair Administrative Action Act, reaffirming the importance of procedural fairness in administrative actions affecting corporate associations.

The introduction of *Companies (Beneficial Ownership Information) Regulations, 2020*, introduced disclosure requirements relating to beneficial ownership. The beneficial ownership framework has enhanced transparency and anti-money laundering compliance but has also generated debate regarding privacy, data protection, and the administrative burden imposed on companies.

3.8.2 Extent of Compliance with International Human Rights Law

The Act is generally consistent with Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the African Charter on Human and Peoples' Rights, both of which protect freedom of association. The registration framework established under Sections 13-18 promotes legal certainty and facilitates the formation of associations through corporate entities. Unlike some regulatory statutes governing associations, the Companies Act provides objective registration criteria and imposes a statutory obligation on the Registrar to register a company once the legal requirements have been met. This significantly reduces the risk of arbitrary denial of registration.

Challenges and Impact on Civic Space

It is noteworthy to state that some civil society organizations and international organizations are registered as Companies limited by guarantee under section 7 of the Companies Act, 2015 which provides as follows:

(1) "For the purposes of this Act, a company is a company limited by guarantee if -

- It does not have a share capital;
- The liability of its members is limited by the company's articles to the amount that the members undertake, by those articles, to contribute to the assets of the company in the event of its liquidation; and
- Its certificate of incorporate states that it is a company limited by guarantee.

(2) Subsection (1) does not prohibit a company limited by guarantee from having a share capital if it was formed and registered before the commencement of this section."

Examples of such CSO's include Africa Centre for Open Governance and Open Society Initiative for East Africa.

In general, the Companies Act does not limit the freedom of association. In the past there has been contention by the NGO Coordination Board that institutions such as AFRICOG should be registered as non-governmental organizations.[224] In 2017, the High Court quashed the purported deregistration of AFRICOG by the Executive Director of the NGO Coordination Board.[225]

3.9 Public Benefit Organisations Act, 2013

The preamble of the Act recognizes the "important role that public benefit organizations play in serving the public good, supporting development, social cohesion and tolerance within society; promoting democracy, respect for the rule of law, and providing accountability mechanisms that can contribute to improved governance." The Act replaces the former Non-Governmental Organizations Coordination Act framework.

223 Republic v Registrar of Companies (Business Registration Service); Rotich & 4 others (Ex parte Applicants); Komen (Interested Party) [2024] KEHC 11990 (KLR) Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/11990/eng@2024-10-03

224 https://africog.org/ngo-board-seeks-to-de-register-africog-for-operating-illegally-citiezen-tv- august-15-2017/

225 High Court Miscellaneous Application No.598 of 2017, http://kenyalaw.org/caselaw/cases/view/145604/

After remaining dormant for over a decade despite presidential assent in 2013, the Act finally came into operation in May 2024. However, implementation of the Act generated significant constitutional concerns relating to compulsory transition requirements, regulatory oversight powers, institutional independence and limitations on organizational autonomy. These concerns culminated in the constitutional petition of *Caleb Otieno & 2 others v Attorney General & another; Katiba Institute & 9 others* (Interested Parties) (Petition E519 of 2024) [2025] KEHC 8557 (KLR), in which the High Court declared several provisions of the Act unconstitutional.[226]

The Act was further amended by the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act, 2024, which introduced additional compliance, reporting, monitoring, and enforcement obligations aimed at aligning Kenya's legal framework with the recommendations of the Financial Action Task Force (FATF).[227]

3.9.1 Provisions affecting Freedom of Association

Section 5(1) defines a PBO as a voluntary membership or non-membership organization engaged in public benefit activities and registered under the Act. This recognition of both membership and non-membership organizations advances the freedom of association guaranteed under Article 36 of the Constitution.

The Act establishes the Public Benefit Organizations Regulatory Authority under Section 34, with powers to register, regulate, monitor, suspend, and deregister organizations. While regulation serves legitimate public interests, extensive powers granted to the Authority may affect organizational autonomy if exercised arbitrarily.

Several provisions were found unconstitutional in *Otieno v Attorney General (2025)*. The Court struck down Paragraphs 5(1) and 5(2) of the Fifth Schedule, which required organizations previously registered under the NGO Coordination Act to apply afresh for registration under the PBO Act. The Court held that compulsory re-registration violated Articles 36, 47, and 27 of the Constitution because it imposed unjustifiable burdens on already lawfully registered organizations and undermined their legitimate expectation of continuity.

The Court also declared Sections 21(1) and 21(9) unconstitutional to the extent that they compelled organizations to belong to the National Federation of Public Benefit Organizations. The Court emphasized that Article 36(2) protects individuals and organizations from compelled association.

Similarly, Section 23(2) was invalidated because it required self-regulation forums to represent a "significant number" of organizations before recognition, thereby limiting the ability of smaller organizations to organize independently.

The Court further declared Section 32 unconstitutional insofar as it required disclosure of information relating to donors, members, beneficiaries, and internal organizational affairs without sufficient safeguards. The Court held that the provision violated the right to privacy under Article 31(c) of the Constitution.

The Court also invalidated Sections 18(1), 18(2), and 18(3), which allowed suspension or cancellation of registration without adequate procedural safeguards, and Section 19(1)(b), which permitted deregistration for acting contrary to an organization's constitution. The Court found these provisions inconsistent with the right to a fair hearing under Article 50(1).

3.9.2 Extent of Compliance with International Human Rights Law

The Public Benefit Organizations Act has generally been regarded as one of the most progressive legal frameworks governing civil society organizations in the region. The legislation reflects several international standards relating to freedom of association, self-regulation, participation and accountability.

The Act aligns with Article 22 of the International Covenant on Civil and Political Rights (ICCPR), Article 10 of the African Charter on Human and Peoples' Rights and the African Commission Guidelines on Freedom of Association and Assembly in Africa. In particular, the recognition of self-regulation mechanisms, the protection of voluntary association, and the establishment of dispute resolution mechanisms are broadly consistent with international best practices.

226 Caleb Otieno & 2 others v Attorney General & another; Katiba Institute & 9 others (Interested Parties) (Petition E519 of 2024) [2025] KEHC 8557 (KLR) https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/8557/eng@2025-04-30

227 Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act, 2024. Available at https://new.kenyalaw.org/akn/ke/act/2025/6/eng@2025-06-20#page-3

However, several provisions of the Act were found by the High Court to be inconsistent with constitutional and international human rights standards. The compulsory re-registration requirements, compelled federation membership, excessive disclosure obligations and broad deregistration powers were found to impose unjustifiable limitations on freedom of association, privacy and fair administrative action.

The 2024 anti-money laundering amendments pursue legitimate objectives relating to the prevention of money laundering and terrorism financing and are broadly consistent with FATF Recommendation 8, which requires States to adopt a risk-based approach to regulating non-profit organizations. In this regard, Section 43A reflects FATF guidance by requiring the Authority to identify organizations genuinely vulnerable to terrorism financing abuse, conduct risk assessments, and develop focused and proportionate responses while safeguarding legitimate activities.

Challenges with Provisions and Impact on Exercise of Freedom of Association

Despite its progressive framework, the Act presents several challenges. These include increased compliance costs, broad regulatory powers, extensive reporting requirements, potential infringement of privacy rights, risks of disproportionate sanctions, and expanded monitoring powers under Section 43A. Smaller organizations may face particular difficulties in meeting the compliance obligations introduced by the 2024 amendments.

While Section 43A incorporates important safeguards by requiring risk-based and proportionate oversight and expressly directing that legitimate operations should not be undermined, concerns remain regarding the criteria used to identify organizations as being at risk of terrorism financing and the possibility of excessive scrutiny of advocacy, human rights, or community-based organizations.

The introduction of criminal sanctions under Section 69 further raises concerns regarding proportionality and compliance with regional freedom of association standards. Criminal liability for administrative non-compliance may discourage civic participation and create unnecessary barriers to the operation of legitimate organizations.

3.10 Community Groups Registration Act, No.30 of 2022

The Community Groups Registration Act, 2022 establishes a statutory framework for the registration, regulation and management of community groups in Kenya. The Act was enacted to provide legal recognition to self-help groups, community based organisations (CBOs), youth groups, women groups, special interest groups and other informal associations that had historically operated under executive administrative directives rather than a comprehensive legislative framework.

The legislation seeks to promote accountability, transparency and proper governance within community groups while facilitating community development and participation in socio-economic activities. The Act also attempts to harmonise the operations of community groups through standardized registration procedures, constitutional requirements and reporting obligations. At the same time, concerns have been raised regarding the extent of state oversight, the administrative burden placed on grassroots organisations and the possible implications of the law on freedom of association.

3.10.1 Provisions affecting Freedom of Association

Section 2 of the Act defines a community group as a voluntary association of individuals from the same community that is self-organised for a common purpose aimed at improving the livelihood of members or promoting community benefit. The definition includes special interest groups, community projects and community-based organisations. The Act therefore creates a distinct legal identity for grassroots associations operating outside the NGO and PBO regulatory regimes. However, this definition has been criticized for potential abuse to exclude groups whose primary roles include state accountability and general democracy interventions.

The Act recognizes the right of individuals to organise themselves into community groups for social and economic development. Section 9 permits any group of persons meeting the statutory thresholds to apply for registration as a community group. Registration requires at least ten adult members, although special interest groups may register with a minimum of five members. The legislation therefore lowers barriers to collective organization and formally recognizes grassroots associations that were previously informally managed.

However, the exclusion of groups formed to champion a political cause may raise constitutional concerns regarding the protection of freedom of association under Article 36 of the Constitution of Kenya. The broad wording of the exclusion creates the possibility of restrictive interpretation by administrative authorities, particularly where advocacy and civic participation activities are involved.

Section 3 establishes the office of the Director of Social Development as the principal authority responsible for administering the Act. The Director is mandated to mobilise communities to form groups, register community groups, supervise and monitor community projects, investigate the activities of community groups and establish capacity-building programs.

Although the institutional framework promotes oversight and coordination, the extensive powers granted to the Director and social development officers may expose community groups to excessive state control. The powers to investigate activities, demand compliance and supervise operations must therefore be exercised consistently with constitutional protections relating to association, participation and administrative justice.

Section 9 provides that a group may apply to the Director for registration in the prescribed form. Registration is contingent upon fulfilling statutory requirements, including submission of a community group constitution. The constitution must contain details on the group's objectives, membership rules, office-bearers, financial management procedures, and dissolution processes.

Section 10 provides that any rule or provision in a community group constitution that is inconsistent with the Constitution, the Act or any other written law shall be void to the extent of the inconsistency. The Second Schedule further prescribes detailed matters to be included in the constitution, including membership requirements, disciplinary procedures, election of office bearers and management of assets and liabilities.

The Act requires every registered community group to maintain proper records, including a register of members, minutes of meetings, financial records and project documentation. Community groups are also required to operate through elected office bearers in accordance with their constitutions. Such governance provisions are intended to enhance transparency, accountability and democratic participation within community organisations.

Section 21 empowers community groups to invest funds, raise money, borrow funds and undertake activities incidental to the attainment of their objectives. This provision recognizes community groups as important actors in local economic development and social welfare initiatives. The ability to manage finances and property provides legal certainty for groups engaging in development projects.

Section 28 (2)(b) and Section 39 creates offences, including criminal sanctions for non-compliance with statutory obligations, including failure to maintain records or comply with regulatory directives. Penalties may include fines, jail-term, suspension or deregistration of groups. While accountability is necessary, punitive measures may disproportionately affect small and informal community associations that lack administrative and financial capacity.

The law also introduces obligations for periodic monitoring and supervision of community groups by social development officers. Although oversight may strengthen compliance and reduce misuse of funds, there are concerns that extensive supervision may discourage civic participation and undermine the autonomy of community groups.

3.10.2 Extent of Compliance with International Human Rights Law

The Community Groups Registration Act generally aligns with international standards relating to freedom of association by formally recognizing the right of communities to organize and participate in development activities. The legislation provides a legal framework for registration and governance while encouraging accountability and community participation. In this respect, the Act supports Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the African Charter on Human and Peoples' Rights.

However, there are a few sections that contravene international law and principles. For instance, Section 14 states that a "community group registered under this Act may, on the expiry of two years after its registration, apply to the Director in the prescribed form and after paying the prescribed fees for the renewal of its registration and, thereafter, apply for renewal of its registration at the expiry of a period of one year."

Section 16(7) states that a community group will be voluntarily dissolved if it does not renew its registration after four years. This language is a bit unclear and may lead to confusion about exactly when and how to apply for registration renewal. The ACHPR Guidelines state that associations shall not be required to register more than once or to renew their registration. These provisions should be amended.

Additionally, several offences are specified in the Bill, with sanctions including criminal penalties of imprisonment. According to the ACHPR Guidelines, a state shall not impose criminal sanctions in laws governing non-profit organizations, but should rather rely on existing sanctions in the Penal Code and other criminal legislations.

Challenges

One of the key challenges arising from the Act is the administrative burden placed on grassroots organisations. Many community groups operate informally with limited technical and financial capacity. Compliance with constitutional requirements, record-keeping obligations and reporting procedures may therefore prove difficult for smaller organizations.

Another concern relates to inadequate public awareness regarding the requirements of the Act. Reports by civil society organizations indicate that many community groups and social development officers were initially unaware of the operational implications of the legislation. Limited sensitization may undermine effective implementation and expose community groups to unintentional non-compliance.

In addition to the above challenges, several sections of the Act have also been challenged in court for violating other legislations, constitution and international principles. In *Katiba Institute & Mathare Social Justice Centre v State Law and others*[228], the petitioners challenge the constitutionality of the Community Groups Registration Act, 2022 (CGRA) in its entirety, arguing that it was enacted without adequate public participation in violation of Articles 10 and 118 of the Constitution, which require public involvement in legislative processes and adherence to the national values and principles of governance. They further contend that the Act undermines the constitutional framework on devolution by assigning functions relating to community development and social welfare to national government institutions, contrary to Articles 6, 174, 175, 186, and the Fourth Schedule of the Constitution, which allocate such functions to county governments. According to the petitioners, the enactment and implementation of the Act disregard the constitutional principles of subsidiarity, democratic participation, and local self-governance that underpin Kenya's devolved system of government.

The petition also challenges several substantive provisions of the Act, including the definition of a "community group" in Section 2 and the powers granted to the Director of Social Development under Sections 3(1), 3(2)(c), 6(e), 6(h), and 12(b). The petitioners argue that these provisions are impermissibly vague, violate the rule of law, and confer excessive discretionary powers on state officials to monitor, investigate, supervise, and influence the activities of community groups. They contend that these powers threaten the freedoms of conscience, religion, belief, opinion, expression, and association protected under Articles 32, 33, and 36 of the Constitution, while imposing unjustifiable limitations contrary to Article 24. The petition further alleges that the registration, suspension, and deregistration framework established under Sections 12–14 violates the rights to freedom of association and fair administrative action guaranteed under Articles 36 and 47, as it permits arbitrary decision-making without adequate procedural safeguards. In addition, the petitioners argue that the Act is inconsistent with Kenya's obligations under regional and international human rights instruments, including Article 10 of the African Charter on Human and Peoples' Rights and Article 22 of the International Covenant on Civil and Political Rights (ICCPR), both of which protect the right to freedom of association.

Beyond the constitutional challenges to the Act itself, the petitioners seek declarations that government authorities violated Article 35 of the Constitution by failing to provide access to information requested by Katiba Institute and breached statutory obligations under the Access to Information Act, 2016. They also allege violations of the Statutory Instruments Act, 2013, particularly Sections 2, 5A, and 26(1), on the grounds that regulations and revised registration forms were introduced without complying with mandatory requirements relating to public participation, consultation, regulatory impact assessment, and parliamentary oversight. The petition seeks orders quashing the revised application forms adopted by the respondents, invalidating registration and renewal decisions made under the impugned provisions, and declaring unlawful actions taken against organizations such as the Mathare Social Justice Centre. Additionally, the petition requests structural remedies requiring national government institutions to build the capacity of county governments to effectively perform devolved social development functions.

228 Katiba Institute & Mathare Social Justice Centre v State Law and Senate &1 Other (HCCHRPET/E098/2024).

Overall, the petition argues that the CGRA establishes an intrusive and duplicative regulatory regime that undermines constitutional guarantees, conflicts with existing legal frameworks governing civic organizations, and exposes grassroots associations to arbitrary state interference, surveillance, and restrictions on civic participation.

3.11 Taxation Laws

Tax regulations can either enhance or inhibit the exercise of the freedom of association. PBOs and non-profit organizations registered under the different legal regimes in Kenya are required to comply with tax regulations and any exemptions thereto are prescribed pursuant to their respective parent legislations or existing taxation laws. The provisions of three tax laws and their correlation to freedom of association will be examined in this section. The Income Tax Act[229] makes provisions for the charge, assessment and collection for income tax and connected purposes; the Value Added Tax (VAT) Act[230] makes provisions for the imposition of value added tax on supplies made in, or imported into Kenya and for connected purposes; the Customs and Excise Duties Act[231] provides for the management and administration customs, including the assessment, charge and collection of customs and excise duties and for connected purposes.

3.11.1 Provisions affecting Freedom of Association Income Tax Act

Section 3(2) provides for the types of income on which income tax is chargeable. These include profits from any business, any employment or services rendered, rights granted to use or occupy property and dividends or interest. Since donations to non-profit organizations are not explicitly provided under this section, applications for exemption from income tax can be made as provided in the First Schedule the Act. Exemption from income tax is applicable to the extent that any Act of Parliament or the Income Tax Act provides for such exemption.[232]

The income of an institution or body of persons that is of a 'public character established solely for the purposes of the relief of the poverty or distress of the public, or for the advancement of religion or education' is entitled to apply for tax exemption subject to the requirement of having been established in Kenya or with regional headquarters is situated in Kenya. In order to grant tax exemption, the Commissioner of Income Tax must be satisfied that; the income is to be expended either in Kenya or that its expenditure will be used for purposes that will benefit residents in Kenya, that such income is solely applied towards executing the purposes of the entity in question and that its business is carried out by its beneficiaries in fulfillment of its purposes.[233]

Section 13 of the Act provides that income accrued in or derived from Kenya as specified in the First Schedule shall be exempt from tax after notice is given by the Minister in the Gazette that such income has been exempted and such exemption shall subsist to the extent specified in the notice. The notice is required under Section 13(3) to be presented to the National Assembly, which must pass a resolution within 20 days either approving or annulling the notice.

3.12 Customs and Excise Duties Act

Part A of the Third Schedule of the Act provides exemptions from duty; exemption for goods imported by charitable institutions is permitted subject to the goods being bona fide gifts of which office equipment, stationery and office furniture are excluded. In order to grant exemption from duty, the Commissioner must be satisfied that the goods are;

> *"Imported by or consigned to charitable organisations registered as such, or which are exempted from registration, by the Registrar of Societies under section 10 of the Societies Act (Cap. 108) or by the Non-Governmental Organizations Co-ordination Board under section 10 of the Non- Governmental Organizations Co-ordination Act, 1990 (No. 19 of 1990) and whose income is exempt from tax under paragraph 10 of the First Schedule to the Income Tax Act and approved by the Commissioner of Social Service for free distribution to poor and needy persons or for use in medical treatment or rehabilitation work in their institutions provided that the Treasury has given its approval in writing where the duty exceeds KSh. 500,000."*[234]

229 Cap 470 of the Laws of Kenya, 2018
230 Act No. 35 of 2015
231 Cap 472 of the Laws of Kenya, 2018
232 Paragraph 2, Schedule 1
233 Paragraph 10, Schedule 1
234 Paragraph 12 (1) (a), Third Schedule

Furthermore, subject to the same conditions outlined above, the Commissioner must be satisfied that the imported goods are donated for free to the charitable organizations and this similarly applies to donations of equipment and passenger motor vehicles.[235]

3.13 VAT Act

Goods and services exempted from VAT charges are provided under the First Schedule of the VAT Act. One of the relevant exemptions relates to provision of humanitarian goods during an emergency within a specified period and for a specified purpose; this is applicable to NGOs or relief agencies authorized by the Cabinet Secretary responsible for disaster management. The exemption from VAT is subject to the condition that:

a) *The goods are for use in areas where a natural disaster or calamity has occurred in Kenya*
b) *The goods are intended for use in officially recognized refugee camps in Kenya;*
c) *The goods are household utensils, food stuffs, materials for provision of shelter or equipment and materials for health, sanitary or educational purposes*
d) *In the case of a natural disaster or calamity, the importation or purchase locally is made within six months or such further period, not exceeding twelve months, as the Commissioner may permit in each case.*[236]

The supply of services rendered by educational, political, religious, welfare and other philanthropic associations to their members is exempted from VAT. In addition, exemption of social welfare services provided by charitable organizations is also provide for; these organizations include those exempted from registration by the Registrar of Societies under section 10 of the Societies Act or by the NGO Coordination Board under section 10 of the NGO Co- ordination Act, or whose income is exempt from tax under paragraph 10 of the First Schedule to the Income Tax Act and approved by the Commissioner of Social Services.[237]

Enactment of the Finance Act, 2019 resulted in amendments to the VAT Act providing for taxation of the 'digital market place', defined under the VAT Act as 'a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.'[238] Subsequent to the requirement by the amendment that the Treasury Cabinet Secretary publishes regulations to bring the digital VAT tax into operation, the Draft Value Added Tax (Digital Marketplace Supply) Regulations, 2020 were published.[239]

An extensive range of taxable digital services is proposed as follows:

a) *Downloadable digital content including downloading of mobile applications, e-books and movies;*
b) *Subscription-based media including news, magazines, journals, streaming of TV shows and music, podcasts and online gaming;*
c) *Software programs including downloading of software, drivers, website filters and firewalls;*
d) *Electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services;*
e) *Supply of music, films and games;*
f) *Supply of search engine and automated helpdesk services including supply of customized search-engine services;*
g) *Tickets bought for live events, theaters, restaurants etc. purchased through the internet;*
h) *Supply of distance teaching via pre-recorded medium or e-learning including supply of online courses and training;*
i) *Supply of digital content for listening, viewing or playing on any audio, visual or digital media;*
j) *Supply of services on online marketplaces that link the supplier to the recipient, including transport hailing platforms;*
k) *Any other digital marketplace supply may be determined by the Commissioner.*[240]

Failure to comply with the provisions in the Regulations shall be subject to penalty of offences under the VAT Act and liability shall also include restriction of access to the digital marketplace.[241]

235 Paragraph 12 (1) (b) & (c), Third Schedule
236 Paragraph 100, Part 1- First Schedule
237 Paragraph 11, Part 2- First Schedule
238 Section 5 (9)
239 https://www.kra.go.ke/en/media-center/public-notices/842-draft-value-added-tax-digital- marketplace-supply-regulations,-2020
240 Section 4, Draft Value Added Tax (Digital Marketplace Supply) Regulations
241 Section 13, Draft Value Added Tax (Digital Marketplace Supply) Regulations

3.13.1 Extent of compliance with International Human Rights Law

A general principle in international human rights on enabling civil society access to resources is that:

> *"NGOs should be assisted in the pursuit of their objectives through public funding and other forms of support, such as exemption from income and other taxes or duties on membership fees, funds and goods received from donors or governmental and international agencies, income from investments, rent, royalties, economic activities and property transactions, as well as incentives for donations through income tax deductions and credits."*[242]

Although states do not have an obligation to grant tax relief to non-profit organisations in protection of the right to freedom of association, when a distinction is made between charitable organizations and those working on human rights issues, this is problematic and discriminatory.[243] It is therefore recommended that laws conferring tax benefits to charitable organizations recognize the protection of human rights as a charitable purpose.[244]

Challenges and impact on civic space

The taxation laws in Kenya do not incentivize philanthropy for public benefit work; the regulatory framework was not devised with the aim of enabling and enhancing the exercise of freedom of association. The PBO Act contains progressive provisions on exempting PBOs from the payment of income tax as well as granting PBOs preferential status under VAT and customs duties The Act also seeks to incentivize donations by providing tax incentives for establishment of endowment funds.[245] These enabling provisions stand in stark contrast to the current tax regulations and would be rendered ineffectual in the absence of corresponding amendments to the tax laws.

Although taxing of the digital economy is intended to increase revenue collection by the government, the proposed VAT regulations would be punitive to 'small and emerging entrants into the market' by subjecting them to a similar threshold of tax obligations as bigger players. The ambiguity in the draft VAT regulations and the blanket provisions necessitate revision.[246] As opined in Article-19 East Africa's submission to the National Assembly;

> *These vague and ill-defined provisions are affecting Kenya's dynamic digital sphere and have introduced legal uncertainty. This is because Kenyan authorities have so far failed to regulate who is captured by the 'digital market- place' provisions… and how they will be taxed.*[247]

The submission further calls upon the National Assembly's Departmental Committee on Finance and National Planning to ensure that the human rights impact of taxing the digital economy is comprehensively assessed prior to effecting the imposition of the digital tax.

242 https://www.ohchr.org/Documents/Issues/FAssociation/GeneralPrinciplesProtectingCivicSpace.pdf
243 https://www.welcomedesk.org/pdf/ISHR-right-to-access-funding.pdf
244 https://www.ohchr.org/Documents/AboutUs/CivilSociety/ReportHC/16_ISHR021015.pdf
245 Paragraph 1, Second Schedule- PBO Act, 2013
246 https://news.bloombergtax.com/daily-tax-report-international/insight-kenya-taxation-of-the- digital-economy
247 https://www.article19.org/resources/kenya-proposed-digital-service-tax-in-finance-bill-should- guarantee-digital-rights/

CHAPTER 4

LAWS AFFECTING THE EXERCISE OF THE FREEDOM OF EXPRESSION

4.1 International and Regional Standards on the Freedom of Expression

Freedom of expression is guaranteed under Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) which provides that:

> *"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."*

In 2011, the Human Rights Committee established under the ICCPR, issued a General Comment on Article 19 which expounded on the scope of the freedom of opinion and freedom of expression.[248] It stated that freedom of expression includes the freedom to express oneself in political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, religious discourse, commercial advertising. The Committee clarified that the scope of Article 19(2) of the Covenant includes expression that may be regarded as deeply offensive provided that it is within the limits of Article 19(3) and 20.[249] For ease of reference, herein below are the said articles of the Covenant:

Article 19(3)

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

a) For respect of the rights or reputations of others;
b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

> *Any propaganda for war shall be prohibited by law.*
>
> *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*

The Committee also pointed out that Article 19(2) protects all forms of expression and the means of their dissemination, which expressions include spoken, written and sign language and such non-verbal expression as images and objects of art. These include books, newspapers, pamphlets, posters, banners, dress, legal submissions. They also include all forms of audio-visual as well as electronic and internet-based modes of expression.[221] The Committee also extensively elaborated on the interplay between freedom of expression and the media; freedom of expression and political rights; the right to access information and the parameters within which freedom of expression may be restricted; and the relationship between article 19 and 20 of the Covenant.

248 Human Rights Committee, 102nd Session, July 2011, General Comment No.34 on Article 19
249 General Comment No.34 on Article 19, par.11

These standards set by the Human Rights Committee shall inform the basis on which Kenyan legislation is analyzed herein.

At the regional level, freedom of expression is guaranteed under Article 9 of the African Charter on Human and Peoples' Rights (ACHPR) which provides as follows:

a) *Every individual shall have the right to receive information*
b) *Every individual shall have the right to express and disseminate his opinions within the law*

Kenya has domesticated the international and regional standards on the right to freedom of expression in the Constitution and various legislation. The Constitution guarantees the right to freedom of expression, freedom of the media and the right to access information.The right to freedom of expression is guaranteed under Article 33 which provides that:

a) *Every person has the right to freedom of expression, which includes -*
    - *freedom to seek, receive or impart information or ideas;*
    - *freedom of artistic creativity; and*
    - *academic freedom and freedom of scientific research.*
b) *The right to freedom of expression does not extend to -*
    - *propaganda for war;*
    - *incitement to violence;*
    - *hate speech; or*
    - *advocacy of hatred that -*
        - *constitutes ethnic incitement, vilification of others or incitement to cause harm; or*
        - *is based on any ground of discrimination specified or contemplated in Article 27(4).*
c) *In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.*

Article 34 of the Constitution guarantees the freedom of electronic, print and all other types of media. It bars the state from exercising control over or interfering with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or penalizing any person for any opinion or view or the content of any broadcast, publication or dissemination. It also guarantees the freedom of establishment of broadcasting and other electronic media subject to licensing procedures that are necessary to regulate the airwaves and other forms of signal distribution; and independent of control by government, political interests or commercial interests. Further, it provides that state- owned media must be free to determine the editorial content of their broadcasts or other communications independently; be impartial; and afford fair opportunity for the presentation of divergent views and dissenting opinions.

Article 35 of the Constitution provides that every citizen has the right of access to information held by the State or information held by another person that is required for the exercise or protection of any right or fundamental freedom. It also provides that every person has the right to the correction or deletion of untrue or misleading information that affects the person. Further, it makes it mandatory for the state to publish and publicize any important information affecting the nation.

These provisions of the Constitution give effect to the provisions of Article 19 and 20 of the ICCPR; the General Comment on Article 19; and Article 9 of the African Charter on Human and Peoples' Rights.

4.2 Finance Bill 2026

Since 2023, Kenya's Finance Bill has become a focal point of civic mobilization, with citizens increasingly analyzing, petitioning, and debating its provisions both online and offline. Public participation surged, reflected in hundreds of petitions to Parliament and widespread digital initiatives aimed at educating others. In 2023, over 600 stakeholders formally petitioned Parliament against provisions such as the housing levy and VAT increases on fuel, bread, and other essentials.[250] By 2024, petitions continued, with Infotrak polls showing 80% of Kenyans opposed to major tax proposals, underscoring broad discontent. Citizens and CSOs launched digital platforms, webinars, and social media campaigns to explain the Finance Bill's impact. In 2025, Parliament itself introduced a QR-code-enabled portal for online submissions, reflecting the growing demand for virtual participation.[251]

250 https://nation.africa/kenya/business/second-chance-why-mps-are-in-the-spotlight-over-finance-bill-petitions-4651422
251 https://eastleighvoice.co.ke/national/154368/kenyans-invited-to-submit-views-on-finance-bill-2025-through-new-online-portal

The Finance Bill, 2026, does not directly regulate freedom of expression. However, several proposed amendments, particularly those relating to digital platforms, virtual assets, tax compliance, and information disclosure, have significant implications for the exercise of freedom of expression in the digital space, including the rights to privacy, anonymity, access to information, and protection of personal data.

The civic space concern arises from the growing intersection between taxation, digital governance, and state access to personal and transactional data. While the stated objective of the Bill is to enhance tax compliance and broaden the tax base, some provisions could expand the State's access to personal financial information and digital activity, creating potential risks for privacy and expressive freedoms online.

4.2.1 Provisions Affecting Freedom of Expression

One of the most significant proposals in the Finance Bill 2026 is the introduction of new provisions requiring Virtual Asset Service Providers (VASPs), including cryptocurrency exchanges, digital asset trading platforms, intermediaries, and counterparties, to file information returns with the Kenya Revenue Authority (KRA).[252] These returns would include detailed information on users and transactions conducted through such platforms. The Bill proposes the insertion of new provisions after Section 6B of the Tax Procedures Act[253] requiring VASPs to provide information on:

- users classified as reportable persons;
- persons exercising controlling interests;
- transaction records;
- digital asset exchanges and transfers; and
- information relating to customers using the platforms.

Although intended to improve tax compliance, these reporting obligations may affect the ability of individuals to engage in digital economic activity anonymously or pseudonymously. Activists, journalists, whistle-blowers, and human rights defenders increasingly rely on digital platforms and virtual assets for communication, fundraising, and financial transactions. Expanded disclosure obligations may therefore have indirect implications for freedom of expression and association.

The requirement for platforms to disclose user information raises concerns regarding Article 31 of the Constitution, which protects individuals from unnecessary disclosure of information relating to their private affairs and guarantees the privacy of communication. It also engages protections under the Data Protection Act, 2019, which requires that personal data be processed lawfully, fairly, and proportionately.

4.2.2 Alignment with International Human Rights Standards

The Finance Bill's objective of improving tax transparency and combating tax evasion is consistent with international standards encouraging financial accountability and the regulation of digital financial systems. International frameworks, including initiatives developed by the Organisation for Economic Co-operation and Development on crypto-asset reporting and tax transparency, encourage governments to establish mechanisms for reporting digital asset transactions.

However, international human rights law requires that measures involving access to personal information be accompanied by adequate safeguards for privacy and freedom of expression. Article 17 of the International Covenant on Civil and Political Rights prohibits arbitrary or unlawful interference with privacy, while Article 19 protects the freedom to seek, receive, and impart information. The United Nations Human Rights Committee has emphasized that surveillance or data collection measures must be lawful, necessary, proportionate, and subject to independent oversight.

The Bill is therefore broadly consistent with international objectives relating to tax compliance, but concerns remain regarding the scope of data collection, the extent of information-sharing obligations, and the absence of explicit safeguards within the Bill itself to protect privacy rights and prevent misuse of personal information.

252 https://www.kenyans.co.ke/news/123081-finance-bill-2026-targets-crypto-digital-platforms-major-tax-overhaul
253 Cap 469B

Challenges in Implementation

- Expansion of State Access to Personal Data: The reporting obligations imposed on virtual asset service providers may significantly increase the amount of personal financial information available to tax authorities, creating concerns about privacy and data security.
- Potential Chilling Effect on Digital Civic Engagement: Perceptions that online financial activities are being monitored may discourage participation in digital advocacy, crowdfunding, and civic mobilization initiatives.

4.3 Kenya Broadcasting Corporation Act

The Act establishes Kenya Broadcasting Corporation (KBC) as a state-owned public broadcasting service, borrowing from the British model with the British Broadcasting Corporation.[254] Under the Act, the Corporation is intended to assume the Government functions of producing and broadcasting programs or parts of programs by sound or television; to provide for the management, powers, functions and duties of the Corporation; and for connected purposes.[255] The Act came into force on 1st February 1989, around the period of the advent of socio- political liberalisation in Kenya, marked by multiparty democracy.[256]

4.3.1 Provisions Affecting Freedom of Expression

Section 3 establishes KBC as a corporate body, and Section 4 provides for the establishment of a board of directors comprising 12 members who are generally presidential and ministerial appointees.[230] The functions of the board are not well enumerated in the Act, save for Section 10 (1), which mandates the Board to direct the establishment of general standards of 'taste, impartiality and accuracy for the contents, including advertisements, of all programs broadcast by the Corporation'. Provisions in the First Schedule of the Act regulate the constitution of the board, the tenure of office, the vacation of office, and procedures during board meetings. Furthermore, there is no provision for the procedure for appointing members of the board who are not Principal Secretaries. Under section 7 of the State Corporations Act, the State Corporations Advisory Committee determines the remuneration of members.

Section 8 provides for the duties and functions of the Corporation, which include: provision of independent and impartial broadcasting services of information, education and entertainment, in English and Kiswahili or other languages, advising the Government on all matters relating to the broadcasting services and providing facilities for commercial advertising and for the production of commercial programs. Additionally, the corporation is required to maintain a fair balance in the allocation of broadcasting hours between different political viewpoints and during election campaign periods in consultation with the Electoral Commission, to allocate free coverage to registered political parties participating in the election.

Section 5 (1) provides that the Managing Director of the Corporation is to be appointed by the Cabinet Secretary in consultation with the Board, and the Cabinet Secretary shall determine the director's terms of service. The Managing Director is vested with the responsibility of the control and executive management of the Corporation.[231] The deputy-managing director is to be appointed by the Board.

While the Corporation is expected to assume the broadcasting services of the Government under Section 9 of the Act, the Corporation is expected to earn revenue from commercial services as provided under Section 8. Further, Part VIII of the Act regulates the finances of the Corporation and provides that sources of financing include government grants, the acquisition of commercial credit subject to the approval of the Treasury, and investments in securities.

254 Nyongesa D. Wafula, (October 2005) Kenya Broadcasting Corporation in a Liberalized Market Economy: The Need For A New Model For Public Service Broadcasting at page 28, para 3. http://erepository.uonbi.ac.ke/bitstream/handle/11295/95936/Wafula_Kenya%20Broadcasting%20Corporation%20In%20A%20Liberalized%20Market%20Economy%20The%20Need%20For%20A%20 Ne w%20Model%20For%20Public%20Service%20Broadcasting.pdf?sequence=1&isAllowed=y

255 Preamble, Kenya Broadcasting Corporation Act, CAP 221 of the Laws of Kenya.

256 Stephen N. Ndegwa, 'The Incomplete Transition: The Constitutional and Electoral Context in Kenya' Africa Today , Apr. - Jun., 1998, Vol. 45, No. 2, The Future of Democracy in Kenya (Apr. - Jun., 1998), at page 193, para 3 https://www.jstor.org/stable/pdf/4187218.pdf

4.3.2 Extent of Compliance with International Human Rights Standards

Principle 13 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa provides guidelines for securing the independence of public service media as follows:

(1) States shall establish public service media governed by a transparently constituted and diverse board adequately protected against undue interference of a political, commercial or other nature.
(2) The senior management of public service media shall be appointed by and accountable to the board.
(3) The editorial independence of public service media shall be guaranteed.
(4) Public service media shall be adequately funded in a manner that protects them from undue interference.
(5) Public service broadcasters shall ensure that their transmission systems cover the whole territory of the State.
(6) The public service ambit of public broadcasters shall be clearly defined and include an obligation to ensure that the public receives adequate and politically balanced information, particularly during election periods.[257]

The provision in the Act requiring the Corporation to offer balanced reporting during election campaign periods conforms to the standard of impartial reporting during elections. However, the constitution of the KBC Board of Directors does not comply with the recommended standards and is thus susceptible to external interference. Four of its members are Principal Secretaries in various ministries; the chairperson is a presidential appointee, while the remaining seven board members are ministerial appointees. The procedure for appointing the seven members is not outlined in the Act, leaving their appointments squarely at the discretion of the Cabinet Secretary. Additionally, appointment of the Managing Director is vested in the Cabinet Secretary, and although the Act provides that the appointment should be done in consultation with the Board, this is not a sufficient safeguard given that the director is answerable to the Cabinet Secretary while performance of the director's duties is subject to the direction of the Board. The Corporation has limited editorial independence, as all content planned, programmed, and aired is subject to approval by the board, which is composed predominantly of government officials and ministerial appointees.[258]

The foregoing provisions do not instill confidence in the independence of the Corporation particularly bearing in mind the critical role of the Board as provided under section 10 of the Act to set the general standards of taste, impartiality and accuracy for the Corporation's programming content.

Furthermore, provisions of the Act to not conform to constitutional guarantees on freedom of the media. Article 34 (4) of the Constitution provides that all state- owned media shall -

a) Be free to determine independently the editorial content of their broadcasts or other communications;
b) Be impartial;
c) Afford fair opportunity for the presentation of divergent views and dissenting opinions.

The recommended standard for state owned media is that "state and government- controlled broadcasters shall be transformed into public service broadcasters, accountable to the public through the legislature or other mechanism for public accountability."[259] The provisions of the KBC Act are skewed towards government control rather than enhancing the public service aspect of the Corporation.

Challenges and Impact on Civic space

The liberalization of the media space in Kenya reinforces the need to secure the independence of KBC in order to safeguard public interest journalism.[260] Although the state broadcaster's semi-autonomous status enables revenue generation from commercial programing, the Corporation's financial independence remains tenuous:

> *"KBC remains chocked in debts that run several years back, has existing service contracts with third parties, some mired in secrecy while others seem to hugely disadvantage the agency, among other budgetary constraints..."*[261]

257 Declaration of Principles on Freedom of Expression and Access to Information in Africa https://www.achpr.org/legalinstruments/detail?id=69
258 Section 4 (1) (f) Kenya Broadcasting Corporation Act, CAP 211 of the Laws of Kenya
259 Principle 11 (2), Declaration of Principles on FoE in Africa
260 https://vicbwire.wordpress.com/2014/05/14/new-kbc/
261 https://citizentv.co.ke/blogs/bwire-need-to-revamp-kbc-and-enhance-public-communication- 260304/

Furthermore, it is argued that establishment of the Corporation as both a commercial entity and public broadcaster is untenable due to the tensions that persist in competing for revenue with private media houses on the one hand and fulfilling its role as a state broadcaster on the other hand, state funding to the Corporation is in decline.[262] The corporation has been left to battle it out with private commercial stations, which are edging it out of the cutthroat competitive broadcast subsector.[263]

The Corporation's impact on freedom of expression and access to information was strongly felt during the KANU era. While the Corporation enjoyed a monopoly of the airwaves at the time and curtailed the right to access to information by broadcasting state-certified content, at present, with the diversification of media and pluralism of media enterprises, the negative impact of the monopoly is no longer felt. That said, government control over the corporation's content and programming limits its editorial independence. The Act, therefore, needs reform to address the anomalies.

4.4 Data Protection Act

The Data Protection Act gives effect to Articles 31(c) and 31 (d) of the Constitution regarding the right to privacy.

Provisions affecting Freedom of Expression

Section 2 defines data as information which -

a) *is processed by means of equipment operating automatically in response to instructions given for that purpose;*
b) *is recorded with intention that it should be processed by means of such equipment;*
c) *is recorded as part of a relevant filing system;*
d) *where it does not fall under paragraphs (a) (b) or forms part of in accessible record; or*
e) *is recorded information which is held by a public entity and does not fall within any of paragraphs (a) to (d).*

Section 5 establishes the office of the Data Commissioner, who has a mandate to oversee the implementation of the Act. The Data Commissioner is mandated under Section 18(2) to prescribe the threshold for mandatory registration of data controllers and processors. The following factors may be taken into consideration when determining such registration: the nature of the industry, the volumes of data to be processed, whether sensitive personal data will be processed, and any other criteria that the Data Commissioner may deem necessary.

Section 19(1) requires that a data controller or data processor apply for registration with the Data Commissioner. A data controller or data processor who gives false information in the application for registration will be guilty of an offence. A certificate of registration shall be issued by the Data Commissioner upon verification that the requirements for registration have been met. The Data Commissioner is required to keep a register of registered data controllers and data processors, which shall be a public document open for inspection.

Section 25 is a key section that outlines the principles of data protection. Data controllers and processors are required to ensure that personal data is processed in accordance with the right to privacy of the data subject and in a transparent manner. The data should be collected for specified and legitimate purposes. Where the information collected identifies data subjects, it should not be kept for longer than necessary for the purpose of the collection.

Section 26 provides for the right of a data subject to be informed of the extent of use of their personal data and to access that data while it is in the custody of a data controller or data processor. The data subject can object to the processing of all or part of their personal data and correct or delete any false or misleading data.

Section 28 permits a data controller or data processor to collect personal data directly from a data subject except in the following circumstances: where the data is contained in a public record or the data subject has availed this data publicly, if they have given consent for their data to be collected by another source and such collection would not prejudice the interest of the data subject or if the data subject is incapacitated and their appointed guardian consents to such collection.

262 https://www.the-star.co.ke/siasa/2020-04-11-battle-for-the-soul-of-kbc-can-it-be-saved-and-who- will-be-its-saviour/

263 Nyongesa D. Wafula, (October 2005) Kenya Broadcasting Corporation in a Liberalized Market Economy: The Need For A New Model For Public Service Broadcasting at page 57, para 1 http://erepository.uonbi.ac.ke/bitstream/handle/11295/95936/Wafula_Kenya%20Broadcasting%20Corporation%20In%20A%20Liberalized%20Market%20Economy%20The%20Need%20For%20A%20 New%20Model%20For%20Public%20Service%20Broadcasting.pdf?sequence=1&isAllowed=y

Collection of personal data should be for a lawful, specific, and explicitly defined purpose. Where data is collected from a source other than the data subject, the data must be for one of the following purposes:

1. Prevention, detection, investigation, prosecution and punishment of crime;
2. Enforcement of a law which imposes a pecuniary penalty;
3. Protection of the interests of the data subject or another person.

Section 29 places on a data controller or data processor a duty to notify the data subject of their rights under Section 26 of the Act, the fact that their personal data is being collected, the purpose for which it is being collected, the third parties to whom data will be transferred, and the safeguards adopted and whether the collection of personal data is voluntary or mandatory.

Processing of personal data shall only be lawful if the data subject consents to the processing for a specified purpose(s) or in the following scenarios: to meet contractual obligations with respect to a data subject, compliance with any legal obligations to which a data controller is subject, protection of the vital interest of the data subject or another person, for reasons of public interest, to facilitate performance of a task by a public authority or for historical, literary or journalistic purposes as well as art and scientific research. Additionally, this can be in pursuit of legitimate interests by the data controller or data processor in disclosing the data to a third party- such disclosure must, however, take into consideration any harm and prejudice to the rights and freedoms or legitimate interests of the data subject.

If data processing is likely to pose a high risk to the rights and freedoms of a data subject, the data controller or processor must conduct a data protection impact assessment. This entails an assessment of the necessity and proportionality of the data processing, a risk assessment of the rights and freedoms of the data subjects, and measures to mitigate these risks, along with safeguards for the protection of personal data.

Section 32 regulates consent by data subjects; the burden of proving that consent was obtained for processing personal data for a specified purpose rests with the data controller or processor. The data subject has a right to withdraw consent at any time, but such withdrawal shall not prejudice the lawfulness of processing of data based on prior consent. Section 36 further provides that a data subject can object to the processing of their personal data, with the exception of legitimate interests that supersede the data subject's interests if such processing is subject to a legal claim.

Section 45 regulates the processing of sensitive personal data and must be subject to the principles of data protection set out in Section 25 of the Act. Sensitive personal data can be processed in pursuit of the legitimate aims of an association, subject to non- disclosure of the data outside the association, or where the data subject has made public such data and where processing of the data is necessary for the advancement of a legal claim.

Exemptions from the requirements of processing personal data apply where such processing is done by an individual for personal reasons, or is necessary for national security or the public interest, and where disclosure is sanctioned by written law or by a court.[255] The principles of processing personal data are exempt from data processing with respect to publication of literary or artistic material, for public interest or where the data controller "reasonably believes that, in all the circumstances, compliance with the provision is incompatible with the special purposes."

A general penalty is provided under Section 73 (1); anyone who commits an offence under the Act for which no specific penalty is provided shall, upon conviction, be liable to a fine not exceeding three million shillings or to an imprisonment term not exceeding ten years, or to both.

Section 71 mandates the ICT Cabinet Secretary to make regulations to give effect to the Act and to prescribe anything required as such by the Act.

4.4.1 Extent of compliance with International Human Rights Law

The right to freedom of expression and the right to privacy are mutually reinforcing; interference with an individual's right to privacy hinders exercise of their freedom of expression. Surveillance of citizens has the consequence of suppressing or controlling their thoughts, ideas and actions. Advancements in information communication technologies have changed the relationships between citizens, states and corporate bodies, which further reinforces the need to protect individuals right to privacy and freedom of expression.

The Data Protection Act was largely modeled on the European Union's General Data Protection

Regulations (GDPR) and was the outcome of extensive public consultation with key stakeholders from the media, private sector, academia and civil society. The Act is said to be among the most advanced pieces of legislation on data protection in Africa.[264] This notwithstanding, there are provisions in the Act that could be implemented in a way that deviates from internationals standards. For instance, public interest is listed among the grounds under Section 30 for exempting the provisions on processing of personal data – public interest is not well defined in the Act and could therefore be subject to a broad interpretation that does not meet the appropriate limitation threshold.[265] The provision of national security as an exemption from the safeguards governing the processing of personal data under Section 51 of the Act is couched broadly and could be open to abuse.[266] Additionally, Section 52 of the Act is said to provide "a narrow definition of journalistic exemption" which could be construed to require journalists to inform the office of the data commissioner about personal data being processed, thereby limiting freedom of the media and expression. The section should be more explicit in exempting journalistic purposes from the requirements of processing personal data.

Challenges and impact on civic space

Appointment of the Data Commissioner will be crucial to set in motion the operationalization of the Data Protection Act; although recruitment was underway since April 2020, the Data Commissioner is yet to be appointed.[267] The independence of the office of the data commissioner is an imperative towards adherence with the requisite data protection safeguards. The role of the ICT Cabinet Secretary in establishing the operational functions of the office of the Data Commissioner as provided under Section 5 (5) of the Act could potentially undermine the independence of the office. Additionally, the mandate given to the Cabinet Secretary to develop regulations to bring provisions of the Act into effect does not explicitly include a role for the Data Commissioner in formulation of the regulations.[268]

Establishing the office of the Data Commissioner as an independent constitutional commission under Article 59(4) of the Constitution, rather than as a state agency, would have guaranteed its independence and insulated it from political and other external interference.[269] The status of the office of the data commissioner as a statutory body is bound to have implications for its financial autonomy, as the office will be reliant on funds allocated by the State Department under which it falls. Given the experience in other countries that data protection authorities are generally underfunded, this would pose a serious operational constraint on the effectiveness of the office of the data commissioner.[270]

4.5 Statistics Act

The Statistics Act provides for the establishment of the Kenya National Bureau of Statistics for the collection, compilation, analysis, publication and dissemination of statistical information, and the coordination of the national statistical system, and for connected purposes.

The realization of human rights is dependent on the availability of concrete data upon which evidence-based policy is conducted and civil, political, social and economic rights can be monitored.[271] In Kenya, civil society relies on statistical information compiled by KEBS for demographic analysis on human rights including the status of marginalized groups such as people living with disabilities, monitoring state enforcement of human rights obligations, which includes using data to inform shadow reporting to international and regional human rights treaty bodies.

There is therefore a correlation between statistics and the exercise of freedom of expression and other rights such as access to information and right to privacy.

4.5.1 Provisions affecting Freedom of Expression

Section 3 of the Statistics Act establishes the Kenya National Bureau of Statistics (KNBS) as a body corporate, and section 4 provides that KNBS shall be the principal agency of the government for collecting, analyzing and disseminating statistical data in Kenya and shall be the custodian of official statistical information.

264 https://www.cio.co.ke/the-implications-of-the-new-data-protection-act/
265 https://privacyinternational.org/sites/default/files/2020- 02/Analysis%20of%20Kenya%20Data%20Protection%20Act%2C%202019_Jan2020.pdf
266 Section 52 (1)
267 https://www.bowmanslaw.com/insights/intellectual-property/data-protection-update- recruitment-of-a-data-commissioner-begins/
268 https://www.laibuta.com/data-protection/what-awaits-the-data-protection-commissioner/
269 https://www.article19.org/resources/kenya-protect-the-data-protection-framework/
270 https://www.laibuta.com/data-protection/what-awaits-the-data-protection-commissioner/
271 https://www.ohchr.org/Documents/Issues/HRIndicators/StatisticsAndHumanRights.pdf

Functions of the Bureau under section 5 include:

a) *Planning, authorizing, co-ordinating and supervising all official statistical programs undertaken within the national statistical system;*
b) *Establishing standards and promoting the use of best practices and methods in the production and dissemination of statistical information across the national statistical system;*
c) *Collecting, compiling, analyzing, abstracting and disseminating statistical information on the matters specified in the First Schedule;*
d) *Conducting the Population and Housing Census every ten years, and such other censuses and surveys as the Board may determine;*
e) *Maintaining a comprehensive and reliable national socio-economic database.*

Section 5 establishes the Board of Directors for oversight of the Bureau's management. Membership of the Board is comprised of; a Chairman appointed by the President; the Principal Secretary in the Ministry responsible for Statistics and the Ministry responsible for Finance; five other persons representing the private sector, NGOs, research institutions, public universities and the National Co- ordinating Agency for Population and Development. The Board is mandated to execute a number of functions including; to formulate and monitor implementation of policies pertaining to the Bureau and recruit staff for the Bureau. Every employee of the Bureau is bound by an oath of secrecy prior to commencing duties relating to provisions of the Act.

The Cabinet Secretary responsible for statistics is mandated to order a population and housing census on the advice of the Board; the census is required to be published in the Gazette including the dates of the census and information to be obtained in the census. Any other agency intending to conduct a census or survey at national, or local level is required to seek the approval of the Board, which may approve or decline to approve such plans. Where approval is granted, the agency conducting the survey is required to submit copies of its report to the Board.

Amendments to the Statistics Act in 2019 included a new section 3B, which establishes the professional independence of the Bureau and mandates the Bureau to observe the fundamental principles relating to statistics set out in the Fourth Schedule of the Act. These principles include; public disclosure of official statistical information, adherence to strict confidentiality of individual data and maintenance of professional ethics in procedures for processing, storage and presentation of statistical data.[272] The Act defines professional independence as 'independence of production and dissemination of statistics from interference or influence by any individual, interest group or political authority.'

Section 22 of the Act restricts the disclosure of information with personal identifiers of an individual who submitted a return for the purposes of the Act, except with the prior written consent of the individual who made the return. A Proviso in this section is the disclosure of any official secret or confidential information or trade secret prescribed by a written law.

4.5.2 Extent of compliance with International Human Rights Law

The Fundamental Principles of Official Statistics adopted by the UN Economic and Social Council in 2013 provide international standards on official statistics.[275] The ten principles outlined in the Fourth Schedule the Statistics Act conform to the UN fundamental principles.

Section 18 (3) of the Act, which provides that the Board can decline approval of any agency seeking to conduct a survey at the national or local level does not meet the legality test to justify restriction on the exercise of freedom of expression as it stops short at outlining the reasons for such disapproval and neither does it provide a mechanism for redress for an aggrieved party.

Section 22 of the Act exempting 'official secrets, confidential information or trade secrets' prescribed under any written law from the restrictions of disclosure under the Act, is overly broad can be applied in contravention of the right of access to information and freedom of expression.

Challenges and impact on civic space

The 2019 amendment to the Statistics Act incorporating the UN principles of official statistics in the fourth Schedule to the Act, along with other amendments that strengthened the independence of the Kenya National Bureau of Statistics (KNBS), was a welcome move that served to enhance public confidence in the Bureau in the lead up to the 2019 census.[273]

272 http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2019/StatisticsAmendmentAct2019.pdf
273 https://unstats.un.org/unsd/dnss/gp/FP-Rev2013-E.pdf

The 2019 census was applauded as the first in the country to officially recognize intersex persons.[274] This is an important milestone that was achieved from years of spirited advocacy by civil society on the rights of intersex persons. The results of the census provide an impetus for civil society to strengthen advocacy for the rights of minorities such as intersex persons.

CSOs conducting research are among entities required to apply for a research license to the National Council for Science and Technology Innovation (NACOSTI).[275] This research typically includes national surveys on human rights related issues. The role of the KNBS Board in approving surveys although contemplated by the Statistics Act is not implemented in practice and this could pose a challenge in future if the roles of the NACOSTI and KNBS are not harmonized in law.

4.6 Registration of Persons Act

The Act provides for the registration of persons, the issuance of identity cards, and other connected purposes.

4.6.1 Provisions affecting Freedom of Expression

Section 2 provides that the Act applies to all persons who are citizens of Kenya and who have attained the age of eighteen years or above and where no proof of age exists, are of the apparent age of eighteen years or above. The Cabinet Secretary is mandated under Section 4 to appoint the Principal Registrar and the Deputy Principal Registrar via notice in the Gazette. The Principal Register is required under Section 5 (1) to keep a register of all persons registered under the Act along with the requisite particulars.

Upon registration, a registered person is to be issued with an identity card and shall contain -

a) A photograph, of the prescribed size and type, of the registered person; and
b) Such of the finger and thumb or palm or toe impressions of the registered person as the registration officer may require,

and for the purpose of obtaining them the registered person shall permit his photograph and his finger and thumb or palm or toe impression to be taken.

Section 9A (1) establishes the National Integrated Identity Management System (NIIMS) and the functions of the system are outlined in subsection (2) as follows:

a) To create, manage, maintain and operate a national population register as a single source of personal information of all Kenyan citizens and registered foreigners resident in Kenya;
b) To assign a unique national identification number to every person registered in the register;
c) To harmonize, incorporate and collate into the register, information from other databases in Government agencies relating to registration of persons;
d) To support the printing and distribution for collection all national identification cards, refugee cards, foreigner certificates, birth and death certificates, driving licenses, work permits, passport and foreign travel documentation, student identification cards issued under the Births and Deaths Registration Act, Basic Education Act, Registration of Persons Act, Refugees Act, Traffic Act and the Kenya Citizenship and Immigration Act and all other forms of government issued identification documentation as may be specified by gazette notice by the Cabinet Secretary;
e) To prescribe, in consultation with the various relevant issuing authorities, a format of identification document to capture the various forms of information contained in the identification documents in paragraph (d) for purposes of issuance of a single document where applicable;
f) To verify and authenticate information relating to the registration and identification of persons;
g) To collate information obtained under this Act and reproduce it as may be required, from time to time;
h) To ensure the preservation, protection and security of any information or data collected, obtained, maintained or stored in the register;
i) To correct errors in registration details, if so required by a person or on its own initiative to ensure that the information is accurate, complete, up to date and not misleading; and
j) To perform such other duties which are necessary or expedient for the discharge of functions under this Act.

The Principal Secretary is responsible for the administration, coordination, and management of the system.[276]

274 https://www.reuters.com/article/us-kenya-lgbt-intersex-trfn/kenyan-census-results-a-big-win-for- intersex-people-idUSKBN1XE1U9
275 https://research-portal.nacosti.go.ke/
276 Section 9A (1)

Section 14 (1) creates a number of offences related to registration which include; failure to apply for registration, knowingly or recklessly providing false information on the particulars required, unlawful deprivation of issuance of an identity card, unlawful entry, alteration or erasure on any identity card or registration document, use of an identity card belonging to any other person and making false representation of identity upon registration or about the status of an identity card. The penalty for these offences is a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding eighteen months or both.

Section 16 empowers the Minister (Cabinet Secretary) to make rules prescribing anything requiring to be prescribed under the Act, develop simple guidelines for the vetting of applicants prior to the issuance or replacement of an identity card among other rules.

Section 18A (1) provides for cancellation of registration and revocation of an identity card by the Director of registration if the card was obtained through -

a) Misrepresentation of material facts;
b) Concealment of material facts;
c) Fraud;
d) Forgery;
e) Multiple registration; or for
f) Any other justifiable cause.

Prior to the cancellation of the registration and revocation of the identity card, the Director of Registration is required under subsection (2) to notify the cardholder in writing of the intention to cancel the registration and revoke the card unless the holder can show cause within fifteen days why the cancellation should not be done. Such cancellation or revocation shall take effect after the expiry of fifteen days of the decision having been made to allow for the right of appeal to a court of competent jurisdiction.

A 2019 amendment bill introduced a new definition of "intersex" under section 3 of the Act, which effectively proposes the recognition intersex persons as belonging to a distinct sex that is neither male nor female for purposes of registration.[307] As discussed earlier in the section on the Huduma Bill, the National Integrated Identity Management System (NIIMS) was integrated into the Registration of Persons Act by adding section 9A in the Act through Miscellaneous Amendment Act No. 18 of 2018.

Subsequent to the amendment of the Act on NIIMS and publication of the Huduma bill, the Cabinet Secretary for Interior introduced the Registration of Persons (National Integrated Identity Management System) Regulations, 2020, for public engagement.[308] The regulations are made pursuant to section 16 of the Act, which empowers the Cabinet Secretary to develop rules to implement provisions of the Act. The objective of the regulations is to bring to effect Section 9A of the Act that establishes NIIMS. Key provisions of the regulations mirror some aspects of the Huduma Bill; one of the criticisms of the bill was the creation of a parallel regulatory framework to the existing framework on registration of persons. The state may have the intention of shelving the Huduma Bill and instead incorporating some of its provisions to the Registration of Persons Act pursuant to Section 9A of the Act, this is however conjecture.

4.6.2 Extent of Compliance with International Human Rights Standards

The right to nationality is guaranteed under a number of international and regional human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and the African Charter on Human and Peoples' Rights.[277]

The denial of recognition to groups of persons as citizens of a country, despite residing there for generations, is often the result of longstanding discrimination. Such persons "fall outside the formal legal system" that recognizes citizenship rights due to the difficulties they experience in acquiring national identity documents. Under Kenyan law, issuance of a national identity card is conditional to enjoyment of the rights and freedoms accorded to citizens.

277 Kenya National Commission on Human Rights - An Identity Crisis? A Study on the Issuance of National Identity Cards In Kenya (2007), 6

Denial of an identity card therefore presents a major impediment particularly for marginalized groups that have historically faced discrimination in issuance of identity cards; these include Kenyans of the Somali ethnic group and Nubians who are not recognized as an ethnic group in Kenya.[278]

The Registration Act does not prescribe vetting procedures for registration and thus contravenes the principle of legality. Vetting committees on registration in Kenya typically require all manner of documentation from individuals even where such documentation does not have a bearing on acquiring citizenship status; this is done on the back of discriminatory policies with a "murky origin", which disproportionately affect ethnic minorities.[279] The lack of legislative guidance on vetting, therefore, subjects applicants to arbitrary requirements and is further compounded by the failure to provide redress for aggrieved persons under the law, contrary to international human rights standards.

Challenges and Impact on Civic Space

The implementation of NIIMS has been criticized as a move towards "digitizing discrimination" of minority groups that are excluded from the existing registration system and "will only reproduce existing inequalities and exacerbate debates over who is 'really' a Kenyan."[280] The challenges and related impact of NIIMS on civic space has been discussed in the preceding section on the Huduma Bill, which includes the consolidated petition by the Nubian Rights Forum that challenged the constitutionality of NIIMS.

The Kenya National Commission on Human Rights has posited that some of the factors that impede an effective registration system in Kenya include: "historical prejudice, ethnic stigmatization, a weak policy and legislative framework, lack of institutional capacity and general government disinterest in the department of registration of persons."[314] This necessitates a "complete overhaul" of the current institutional structure of registration of persons, and a proposal made in this regard is the establishment of the office of the Commissioner of Registrar of Persons as an independent office.[315]

4.7 Computer Misuse and Cyber Crimes Act (No. 5 of 2018) and the Computer Misuse and Cybercrimes (Amendment) Act of 2025

The enactment of the Computer Misuse and Cyber Crimes Act occurred in a context where global technological advancements have spurred legislative responses to address the challenges arising from the growth of cyberspace. The enactment of the Act was preceded by the Ministry of Information and Communications' development of a National Cyberspace Strategy.[281] The Act regulates cyberspace by creating offences relating to computer systems; creating enabling provisions for timely and effective detection, prohibition, prevention, response, investigation and prosecution of computer and cybercrimes; creating provisions to facilitate international co-operation in dealing with computer and cybercrime matters; and for connected purposes.[282]

4.7.1 Provisions Affecting Freedom of Expression

Section 3 of the Act provides that the objects of the Act are to: protect the confidentiality and integrity of computer systems; prevent the unlawful use of computer systems; facilitate the detection, investigation, prosecution, and punishment of cybercrimes; and facilitate international cooperation in dealing with computer and cybercrime matters.

Section 4 establishes the National Computer and Cybercrimes Co-ordination Committee. Its membership under section 5 is principally comprised of government officials.[283]

278 https://namati.org/ourwork/citizenship/

279 https://www.justiceinitiative.org/voices/out-cold-vetting-nationality-kenya

280 https://www.nytimes.com/2020/01/28/world/africa/kenya-biometric-id.html

281 Government of Kenya Ministry of Information Communications and Technology (2014) National Cyber Security Strategy at page 4-5 http://icta.go.ke/pdf/NATIONAL%20CYBERSECURITY%20STRATEGY.pdf

282 Preamble, Computer Misuse and Cybercrime Act, 2018.

283 Membership includes; the Principal Secretary responsible for matters relating to internal security or a representative designated and who shall be the chairperson; the Principal Secretary responsible for matters relating to ICT or a representative designated in writing by the PS; the Attorney-General or a representative designated in writing by the Attorney-General; the Chief of the Kenya Defense Forces or a representative designated in writing by the Chief of the KDF; the Inspector-General of the National Police Service or a representative designated in writing by the IG of the National Police Service; the Director-General of the National Intelligence Service or a representative designated in writing by the Director General of the NIS; the Director-General of the Communications Authority of Kenya or a representative designated in writing by the Director-General of the CAK; the Director of Public Prosecutions or a representative designated in writing by the Director of Public Prosecutions; the Governor of the Central Bank of Kenya or a representative designated in writing by the Governor of the Central Bank of Kenya; the Director who shall be the secretary of the Committee and who shall not have a right to vote.

The functions of the National Computer and Cybercrimes Co-ordination Committee are outlined under section 6 as follows -

a) *Advise the Government on security related aspects touching on matters relating to blockchain technology, critical infrastructure, mobile money and trust accounts;*
b) *Advise the National Security Council on computer and cybercrimes;*
c) *Co-ordinate national security organs in matters relating to computer and cybercrimes;*
d) *Receive and act on reports relating to computer and cybercrimes;*
e) *Develop a framework to facilitate the availability, integrity and confidentiality of critical national information infrastructure including telecommunications and information systems of Kenya;*
f) *Co-ordinate collection and analysis of cyber threats, and response to cyber incidents that threaten cyberspace belonging to Kenya*
g) *Co-operate with computer incident response teams and other relevant bodies, locally and internationally on response to threats of computer and cybercrime and incidents;*
h) *Establish codes of cyber-security practice and standards of performance for implementation by owners of critical national information infrastructure;*
i) *Develop and manage a national public key infrastructure framework;*
j) *Develop a framework for training on prevention, detection and mitigation of computer and cybercrimes and matters connected thereto; and*
k) *Perform any other function conferred on it by this Act or any other written law.*

Part III of the Act creates a number of offences including; unauthorized access to computer systems which includes access with intent to commit an offence; unauthorized interference to a computer system, program or data; unauthorized interception of a telecommunications system; illegal manufacture, sale procurement, importation, supply, distribution of illegal devices, programs and access codes; unauthorized disclosure of password or access code; cyber espionage; publication of false information; publication of child pornography; computer forgery; computer fraud; cyber harassment; cybersquatting; identity theft and impersonation; phishing; interception of electronic messages or money transfers; willful misdirection of electronic messages; cyber terrorism; inducement to deliver electronic message; intentionally withholding message delivered erroneously; unlawful destruction of electronic messages; wrongful distribution of obscene or intimate images; fraudulent use of electronic data; issuance of false e-instructions; failure of reporting a cyber threat by operators of computer systems or networks; failure of employees to relinquish their employee's access codes upon termination of employment.[284] Some of these offences will be considered in greater detail below.

Section 22 of the Act criminalizes false publication. It provides that any person who intentionally publishes false, misleading or fictitious data or misinforms with intent that the data shall be considered or acted upon as authentic, with or without any financial gain, commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years, or to both.

Section 22 (2) of the Act restates the limitation of the freedom of expression guaranteed under Article 33 of the Constitution of Kenya in respect of intentional publication of false, misleading or fictitious data or misinformation that is likely to propagate war or incite persons to violence, constitutes hate speech, advocates hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm, or is based on any ground of discrimination specified or contemplated in Article 27(4) of the Constitution or negatively affects the rights or reputations of others.

Section 23 of the Act criminalizes the publication of false information. It provides that a person who knowingly publishes information that is false in print, broadcast, data or over a computer system, that is calculated or results in panic, chaos, or violence among citizens of the Republic, or which is likely to discredit the reputation of a person, commits an offence and shall on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or to both.

Section 27 of the Act creates the offence of cyber harassment. It provides that a person who, individually or with other persons, willfully communicates, either directly or indirectly, with another person or anyone known to that person, commits an offence, if they know or ought to know that their conduct is likely to cause those persons apprehension or fear of violence to them or damage or loss on that persons' property; or detrimentally affects that person; or is in whole or part, of an indecent or grossly offensive nature and affects the person. A conviction on this offence attracts a maximum fine of twenty million shillings or to imprisonment for a term not exceeding ten years, or to both.

284 Sections 14 to 41

Section 27 (3) of the Act gives a provision for the victim of the offence to apply to Court for restraining orders compelling the offender under subsection (1), to refrain from engaging or attempting to engage in; or enlisting the help of another person to engage in, any communication complained of under subsection (1). A person who contravenes an order made under the section commits an offence and is liable, on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six months, or to both.

Section 28 creates the offence of cybersquatting defined as taking or making use of a name, trademark, domain name or other word or phrase registered, owned or in use by another person on the internet or any other computer network, without authority or right. The penalty for the office is a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

Section 29 criminalizes identity theft and impersonation where a person who fraudulently or dishonestly makes use of the electronic signature, password or any other unique identification feature of any other person commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

Section 33 criminalizes cyber terrorism as follows: a person who accesses or causes to be accessed a computer or computer system or network for purposes of carrying out a terrorist act, commits an offence and shall on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or to both.

Section 37 forbids wrongful distribution of obscene or intimate images by a person who transfers, publishes, or disseminates, including making a digital depiction available for distribution or downloading through a telecommunications network or through any other means of transferring data to a computer, the intimate or obscene image of another person. Conviction of the offence attracts a penalty of a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years, or to both.

Unlawful destruction of electronic messages is an offence under section 39 and occurs where a person who unlawfully destroys or aborts any electronic mail or processes through which money or information is being conveyed commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years, or to both.

4.7.2 Extent of Compliance with International Human Rights Standards

The offences created in the Act can be measured against the three-pronged test of legality, proportionality and necessity in international human rights to determine the extent to which the provisions limiting the exercise of freedom of expression are justifiable in accordance with human rights standards.

The definition of offences in the Act has been found to be vague and leaves room for subjective interpretation that may lead to unjustifiable restrictions on the right to freedom of expression. An example is the offence of false publication under section 22 of the Act.[285] The legality test requires that legal provisions be couched in a precise manner and should therefore not be open to misinterpretation due to any ambiguity in wording.

The offence of false publication under the Act contravenes the principle of legality as it contains various words, which are not aptly defined in the Act and thus lead to vagueness of the offence as proscribed under the Act. The words 'false', 'misleading' or 'fictitious' are blanketly criminalized without a clear definition. A plain reading of the words would impute a subjective construction of information published. The Act operates on the presumption of a singular 'truth' to which every person subscribes and unjustifiably introduces this 'truth' as a precondition to enjoyment of the freedom of expression. As indicated in a commentary on the law before its enactment, 'enacting a legal duty of "truth" would create a powerful instrument enabling authorities to control journalistic activities and free expression online.'[286]

Precision in laws prescribing offences necessitates an objective description of the elements of the offence with specific wording. The offence of identity theft and impersonation under section 29, for instance, contains an element of "dishonestly" using someone else's "unique identification features", but these terms are not defined in the Act.

285 https://theconversation.com/kenyas-new-cybercrime-law-opens-the-door-to-privacy-violations- censorship-97271

286 https://www.article19.org/resources/kenya-passage-of-flawed-computer-and-cybercrimes-act- threatens-free-expression/

Section 39 on unlawful destruction of electronic messages does not spell out what amounts to the elements of "unlawful" nor "destruction" in the offence.[287]

The publication of false information "likely to discredit the reputation of a person" under section 23 introduces criminal defamation in contravention of international human rights standards. Principle 22 of the Africa Declaration on Principles of Freedom of Expression states "the imposition of custodial sentences for the offences of defamation and libel is a violation of the right to freedom of expression." States are further required to decriminalize defamation in favor of civil libel proceedings.

Section 23 further contravenes constitutional standards following judicial determination on the unconstitutionality of criminal defamation under Kenyan law.[288] The reintroduction of criminal defamation by section 23 can thus be construed as an illegality. Additionally, the use of the words "chaos" and "panic" to describe the outcome of false publications are undefined in the Act and thus open to arbitrary interpretation.

The offences in the Computer Cyber Crimes Act attract very hefty penalties that are considerably disproportionate to the offences hence amounting to an unjustifiable restriction of the exercise of freedom of expression. The offences of false publication under Sections 22 and 23 are both punishable with a fine not exceeding five million shillings or imprisonment for a term not exceeding two years, or both, while the offence of cyber harassment under Section 27 is subject to a fine of Kshs20 million fine or imprisonment of up to 10 years or both. These sanctions do not conform to the standard of proportionality.

In *Bloggers Association of Kenya (BAKE) v Attorney General & 3 others; Article 19 East Africa & another (Interested Parties) [2020]* eKLR, the petitioner challenged the constitutionality of several sections of the Computer Misuse and Cybercrimes Act.[289]

In considering the proportionality of the restrictive measures in section 22 of the Act dealing with the offence of false publication, the court stated as follows:

> *A particular restrictive measure may seem correct if it is studied solely for the perspective of the person affected, however from a systemic digital perspective, noting the speed with which information is shared on the internet, the court must not only consider the impact of the limitation on private citizens, but must also consider the limitation from the prospective of interoperability of the internet.*[326]

Based on the consideration above, the court found that the petitioner had not demonstrated that the excessiveness of the limitation in section 22 outweighs the public interest. The court further stated with respect to section 23 that the regulation to control the spread of false information, which results in "fear and panic amongst members of the public and may create chaos, uncertainty and a threat to the national security of the country", is necessary. On the issue of ambiguity of the elements of the offence, the court found that the word "false" as used in the section is a 'plain English word and it does not require a legal definition'.

The petitioner argued that the offence of cybersquatting under section 28 was unconstitutional and that it could be addressed through less restrictive measures under trademark and copyright laws. The court, however, found the assertion of unconstitutionality of section 28 on the grounds that it limits the freedom of expression to be unfounded.

The petitioner challenged the constitutionality of section 37 of the Act on wrongful distribution of obscene or intimate images on the basis that the terms "obscene" or "intimate" are not defined in the Act and were therefore insufficient to meet the limitation test on the exercise of freedom of expression under Article 24 of the Constitution. On this issue, the court found that the offence was not a novel one as distribution of obscene images was criminalized conduct under the Penal Code; the only difference was the application of section 37 to the use of telecommunication networks or transfer of data to a computer.

The Court upheld the constitutionality of all the impugned sections of the Computer Misuse and Cybercrimes Act stating that the law was in the interest of national security and further, that the need to protect the public from the risks associated with the cyberspace outweighed the contentions raised in the petition. BAKE subsequently appealed this decision.[290]

287 https://www.theelephant.info/features/2018/05/24/taming-the-internet-the-good-the-bad-and- the- ugly-parts-of-the-computer-misuse-and-cybercrimes-act-2018/

288 https://www.standardmedia.co.ke/commentary/article/2001363055/cybercrime-laws-blow-to-freedom-of-expression

289 Sections 5,16,17,22,23,24,27,28,29,31,32,33,34,35,36,37,38,39,40,41,48,49,50,51,52 & 53 of the Act.

290 https://www.blog.bake.co.ke/wp-content/uploads/2020/01/Civil-Appeal-No.-197-of-2020- Cybercrimes-Act-BAKE-.pdf

Challenges and Impact on Civic Space

The criminalization of fake news is patently challenging due to the vague nature and subjectivity of the offence, which consequently increases the likelihood of executive

overreach in curtailing dissenting opinions and access to information. This is occasioned by using fake news laws as a 'dragnet to outlaw reporting on government misconduct' the expression of critical opinions, and the speech of the political opposition, bloggers, human rights defenders, and journalists.'[331]

The prohibition against misinformation holds online users to unrealistic standards of factual accuracy under the threat of grave criminal penalties. Similarly;

> *"The provisions around "publication of false information" and "hate speech" are too broadly framed. The worry is that such blanket provisions might lead to a damping down of free expression. Citizens may even self-censor, not sharing different opinions or views, because they worry that these will somehow contravene the act."*[291]

Civil society forewarned that the passage of the Computer and Cybercrimes Act would have a chilling effect on the exercise of freedom of expression and freedom of the media in Kenya.[333] Although the Bloggers Association of Kenya appealed the High Court decision that upheld the constitutionality of the Cybercrimes Act, since the operationalization of the disputed sections of the Act, two bloggers have been charged with the offence of publication of false information contrary to section 23 of the Act.

Robert Alai was accused of publishing false information regarding the death toll from COVID-19 in Mombasa county[334] while the other, Cyprian Nyakundi, was accused of spreading false information that a top Kenya Revenue Authority (KRA) official travelled abroad and failed to quarantine upon his return.[292] The Law Society of Kenya subsequently applied for conservatory orders to suspend section 22 (false publications) and 23 (publication of false information) of the Cybercrimes Act pending the determination of the appeal by the Bloggers Association. LSK argued that:

> *"The arrest, arraignment and prosecution for COVID 19 related publications under the statute is likely to have a chilling effect. Bloggers, activists, journalists and whistle blowers will be discouraged from publishing information on suspected violation of the Ministry of Health COVID 19 guidelines – with grave public health consequences. Consequently, the application and the appeal itself will become moot and academic if any members of the public are arrested, prosecuted and convicted under the statute, in the pendency of this matter."*

The Court of Appeal rejected the application stating that it was based on "futuristic presumptuous events" and that the applicant had failed to demonstrate that if the orders sought were not granted, this would render the appeal naught.

4.8 Media Council of Kenya Act

The history of enactment of this Act traces back to the year 2002, when the democratically elected National Alliance Rainbow Coalition (NARC) assumed the reins of power in the country. In contrast with its repressive predecessor, the Kenya African National Union (KANU), NARC's reign was characterized by momentary (in its first term) expansion of civic space.[293] This was a logical result of the spirited campaigns by the civil society, exposing the governance deficit in the KANU's regime, which worked in favor of NARC. The expansion reprieved the Civil Society Organizations in various sectors, which could then play their watchdog role freely. The media industry, which had been almost completely muzzled, was among the greatest beneficiaries of this expansion. This saw the then existing media enterprises airing their contents more freely and exponential growth of broadcast journalism with 108 broadcast licenses issued to 46 companies, close to 20 television station being on air, and 378 radio broadcast licenses issued to 80 firms.[294]

291 https://theconversation.com/kenyas-new-cybercrime-law-opens-the-door-to-privacy-violations- censorship-97271

292 Annette Wambulwa, (3rd June 2020) The Star, 'State opposes LSK case against arrest of blogger' https://www.the-star.co.ke/news/2020-06-03-state-opposes-lsk-case-against-arrest-of- bloggers/

293 P. Wanyande (2009), Discourses on Civil Society in Kenya 'Civil Society and Transition Politics: Historical and Contemporary Perspectives', at pg. 15-16. http://erepository.uonbi.ac.ke/bitstream/handle/11295/38988/CIVIL%20SOCIETY%20AND%20TRANSI TION%20POLITICS.pdf?sequence=1

294 Jackline A. Okore (2014) Regulation of Media: Comparative Analysis Of Regulation Of Broadcasting Services In Kenya, at pg. 10 para. 2. https://pdfs.semanticscholar.org/909a/9fa2907255f98fafccd8b083518b943ff3be.pdf. e also Nyongesa D. Wafula (2004) Kenya Broadcasting Corporation in a Liberalized Market Economy: The Need For A New Model For Public Service Broadcasting, at pg. 33-34 http://erepository.uonbi.ac.ke/bitstream/handle/11295/95936/Wafula_Kenya%20Broadcasting%20C orporation%20In%20A%20Liberalized%20Market%20Economy%20The%20Need%20For%20A%20 Ne w%20Model%20For%20Public%20Service%20Broadcasting.pdf?sequence=1&isAllowed=y

Considering the upsurge in the number of broadcasters and in exercise of their right to organize, stakeholders in the media industry formed a self-regulatory body in 2004, the Media Council of Kenya (MCK). By 2006, under the NARC regime, corruption and rising governance deficits had made the government increasingly intolerant of the Media, as evidenced by the government-ordered raid on the Standard Media Group.[341] The intolerance culminated in the enactment of the Media Act, 2007, which transitioned the regulatory institution from an independent body to a statutory body, resulting in co-regulation of the media industry, with the government.

Even though this was one of the government's moves to constrain press freedom, it was justified as necessary for oversight. The Council's mandate remained to mediate or arbitrate in disputes between the Government and the media, between the public and the media and intra-media; and to administer the conduct of journalists as professionals. [342] The Act held sway until 2013, when the instant Media Council of Kenya Act was enacted, thereby conforming the 2007 Act to the Constitution of Kenya 2010 (the Constitution) and other regional and international legal instruments, as stipulated under Article 34(5) of the Constitution. The object of the Media Council of Kenya Act is to establish the Media Council of Kenya and to establish the Complaints Commission, and for connected purposes.

4.8.1 Provisions Affecting Freedom of Expression

Section 4 of the Media Council Act lists the persons and entities who are subject to the application of the Act as; media enterprises, journalists, media practitioners, foreign journalist accredited under the Act and consumers of media services.

Section 3(2) provides that the persons listed under section 4 shall exercise the right to freedom of expression in a manner that

a) Reflects the interests of all sections of society
b) Is accurate and accurate and fair;
c) Is accountable and transparent;
d) Demonstrates respects the personal dignity and privacy of others;
e) Demonstrate professionalism and respect for the rights of others; and
f) Is guided by the national values and principles of governance set out under Article 10 of the Constitution.

Section 6 (1) of the Act provides that the functions of the Council are to -

a) Promote and protect the freedom and independence of the media;
b) Prescribe standards of journalists, media practitioners and media enterprises;
c) Ensure the protection of the rights and privileges of journalists in the performance of their duties
d) Promote and enhance ethical and professional standards amongst journalists and media enterprises
e) Advise the government or the relevant regulatory authority on matters relating to professional education and the training of journalists and other media practitioners
f) Set standards, in consultation with the relevant training institutions, for professional education and training of journalists
g) Develop and regulate ethical and disciplinary standards for journalist, media practitioners and media enterprises
h) Accredit journalists and foreign journalists by certifying their competence, authority or credibility against official standards
i) Conduct an annual review of the performance and the general public opinion of the media, and publish the results in at least two daily newspapers of national circulation
j) Through the Cabinet Secretary, table before Parliament reports on its functions
k) Establish media standards and regulate and monitor compliance with the media standards
l) Facilitate resolution of disputes between the government and the media and between the public and the media and intra media
m) Compile and maintain a register of accredited journalists, foreign journalists, media enterprises and such other related registers as it may consider necessary
n) Subject to any other written law, consider and approve applications for accreditation by educational institutions that seek to offer courses in journalism
o) Perform such other functions as may be assigned to it under any other written law.

In performance of its functions, the Council and everyone to whom the Act applies is required under **section 6 (2)** to adhere to Article 33(2) of the Constitution on limitations of the exercise of freedom of expression by ensuring that the freedom and independence of media is exercised in a manner that respects the rights and reputations of others, protects national security, safeguards public order, public

health and public morals and complies with any other written law. The Cabinet Secretary is mandated to make regulations to give further effect to this subsection.[343]

Section 7 of the Act provides for the composition of the members of the Council. It consists of nine members inclusive of the chair of the Council, one person nominated by the Cabinet Secretary and seven members. The Cabinet Secretary in charge of media matters convenes the panel for selecting the chairperson and seven members of the Council.[295] An elaborate selection process is further outlined in the section 7 and the requisite qualification for appointment of the Council chairperson and membership is provided under Section 8. The Cabinet Secretary is mandated to appoint the chairperson and seven members of the Council within seven days of receipt of the names of the nominees from the selection panel, by notice in the Gazette.[296] Rejection of a nominee is only permissible on the grounds set out in section 8(2), in which case Cabinet Secretary is required to communicate the decision to the selection panel.

Section 11 of the Act envisions an independent Council, free from political or government control and commercial interests. The disqualification of members of parliament, county assemblies and political party officials from the membership of the council as provided in Section 8 (2) is therefore aimed at securing the independence of the Council. The Council members enjoy security of tenure of up to a term of three year, renewable once.

Removal of the chairperson or council members from office can only be done on specified grounds which include; violation of the Constitution or any other written law, gross misconduct, physical or mental incapacitation, incompetence or neglect of duty, bankruptcy, absence from three consecutive Council meetings without justifiable cause, conflict of interest arising from association with media enterprises and conviction of a criminal offence with a penalty of more than six months imprisonment without a fine.

The procedure for removal from office entails submission of a petition in writing to the National Assembly following which the National Assembly is required to consider the petition and within seven days make a recommendation to the Cabinet Secretary. Upon receiving the recommendation, the Cabinet Secretary shall suspend the member from office pending determination of the petition and shall appoint a tribunal to consider the petition. If the tribunal is satisfied about the grounds for removal, a recommendation shall be made to the Cabinet Secretary who will be bound by the recommendation by the tribunal.

Under section 23 of the Act on funds of the Council, the National Assembly allocates funds to the Council and other sources of revenue include fees collected from accreditation and donations received by the Council. Under section 16 of the Act, the Salaries and Remuneration Commission prescribes the remuneration of the Council members and staff. Section 22 protects the Council, and its officers are protected from liability for actions and omissions done by them in good faith in the exercise and performance of any power, authority or duty imposed by them under the Act.

Section 27 of the Act provides for the establishment of the Complaints Commission. The key functions of the Commission are to:

a) *Mediate or adjudicate in disputes between the government and the media and between the public and the media and intra media on ethical issues;*
b) *Ensure the adherence to high standards of journalism as provided for in the code of conduct for the practice of journalism in Kenya; and*
c) *Achieve impartial, speedy and cost-effective settlement of complaints against journalists and media enterprises, without fear or favor in relation to the Act.*

Akin to the Media Council, appointment of the members of the Commission are to be done by the selection panel as constituted under Section 7 (3) of the Act and the selection procedures shall apply in a like manner. However, the procedure for rejection of nominees differs from the Council process. Section 27 (5) provides that the Cabinet Secretary may reject any nomination on reasonable grounds

295 The composition of the selection panel as provided under Section 7 (3) includes representatives of the following entities: Kenya Union of Journalists; Media Owners Association; Kenya Editor's Guild;
Law Society of Kenya; Kenya Correspondents Association; Public Relations Society of Kenya;
National Gender and Equality Commission; Association of Professional Societies in East Africa;
Consumers Federation of Kenya; the Ministry responsible for matters relating to media; Kenya News Agency; and two persons nominated by schools of journalism of recognized universities, one representing public universities and the other representing private universities

296 Section 7 (11)

and shall communicate the decision to the selection panel. The selection panel is then required to select another person from the list of shortlisted candidates. The grounds for refusal to approval of a nominated member to the Commission are, however, not provided.

Section 30 provides that the Complaints Commission shall be independent in its operations and shall be guided by the provisions of Article 159 of the Constitution which vests judicial authority in tribunals established by the Constitution.

Section 34 (1) on complaints provides that a person aggrieved by -

a) *Any publication by or conduct of a journalist or media enterprise in relation to this Act; or*
b) *Anything done against a journalist or media enterprise that limits or interferes with the constitutional freedom of expression of such journalist or media enterprise*

May submit a written complaint to the Complaints Commission setting out the grounds for the complaint, nature of the injury or damage suffered and the remedy sought.

Section 34 (9) provides that the Commission "may refer a complaint made under subsection (1) to the Communications and Multimedia Tribunal established under the Kenya Information and Communications Act, 1998, where the Commission determines that the complaint relates to a matter which falls within the mandate of the Tribunal."

Section 35 sets out the procedural aspect of dealing with complaints; the Commission upon receipt of a complaint is required to notify the party against whom the complaint has been made with the particulars of the complaint within fourteen days. The party is then required to respond in writing before appearing before the Commission. Upon consideration of the submissions by both parties, the Commission shall conduct a preliminary assessment to determine the admissibility of the complaints. If a breach of the Act or the Code of conduct is found to have arisen, the Commission may resort to a resolution of the complaint through an inter parties mediation process.[353]

Section 32 sets out the procedure for mediation of disputes and in the event that mediation fails or the parties reject the mediation, the complaint shall be determined upon a full hearing by the Commission.

Under section 38, decisions of the Complaints Commission after a full hearing of the complaint may comprise of the following orders:

a) *Publication of an apology and correction as directed by the Commission*
b) *Return, repair, or replacement of any confiscated or destroyed equipment or material belonging to a journalist*
c) *A directive and declaration on freedom of expression;*
d) *A public reprimand of the journalist or media enterprise involved*
e) *An order requiring the offending editor of the broadcast, print or on-line material to publish the Commission's decision*
f) *Imposition of a fine of not more Kshs. 500,000 on any respondent media enterprise and a fine of not more than Kshs. 100,000, on any journalist, found to have violated the Act or Code of Conduct*
g) *Recording criticism of the conduct of the complainant in relation of the Complaint in its findings, where such criticism found to be warranted*
h) *Recommend to the Council the suspension or removal from the register of the journalist involved;*
i) *Any other order that may be deemed necessary*

A person aggrieved by the decision of the Commission has a right of appeal to the High Court as provided under section 42.

The Second Schedule of the Act contains the Code of conduct for the practice of journalism.

4.8.1 Extent of Compliance with International Human Rights Standards

The media is a key player in civil society. It plays a critical watchdog role and is rhetorically referred to as the fourth arm of the government. The effectiveness of the media in fulfilling its oversight role depends on its independence. Consequently, the independence or lack thereof of its regulators determines media independence and the extent to which the guarantees of freedom of expression and access to information are realized, for the benefit of the public who are consumers of their content.

An assessment of institutional framework of the regulatory bodies under the Act against international best practices would reveal if the execution of their functions either serves to enhance or limit the freedom of expression, press freedom and the right to access information.

Principle 16 (1) of the Declaration of Principles on Freedom of Expression and Access to Information in Africa,[297] provides that as part of fulfillment of the obligation to promote freedom of expression and access to information, states shall encourage media self-regulation, which is impartial, expeditious cost-effective and promotes high standards in the media in accordance with established codes of conduct. Co- regulation that is founded on multi stakeholder collaboration can be encouraged as a complement to self-regulation. The Media Council Act subscribes to the co- regulatory model.

Challenges and Impact on Civic Space

Although the Media Council discharges the function of regulating media standards, it is considered to be a weak regulatory body. This is also occasioned by a number of factors, such as the multiplicity of regulatory bodies including the Communications Authority of Kenya, the primary regulator of broadcast media.[298] A proposal to elevate the Council to the status of a Constitutional commission in accordance with Article 34 (5) of the Constitution has been submitted by stakeholders in the media industry in order to strengthen the independence of the regulatory body.[299] This status would ensure that the Council is allocated budgetary provisions through the Consolidated Fund and is accountable to Parliament and not the Communication Ministry. Furthermore, media stakeholders are of the view that the Council should be the "sole regulator of media content as well as the conduct of professionals in the industry."[300]

The Complaints Commission is also considered to be a weak body; members of the public have demonstrated a much higher preference in pursuing litigation withrespect to grievances related to the media rather than utilizing the complaints mechanism in the Media Council Act.[367] Since the establishment of the Complaints Commission in 2013, only 30 complaints have been submitted to it by members of the public.[301] The slow uptake of pursuing grievances with the Commission can be attributed to a number of reasons; accessibility of the Commission, underfunding which affects its effectiveness in resolving disputes, the nature of remedies that the Commission is mandated to award and slow dispute resolution process. For instance, a dispute about a radio show that was lodged with the Commission in 2010 is said to have taken a period of 18 months to conclude.[302]

Lack of a properly resourced and functioning secretariat affects the efficiency of the complaints mechanism. It has been observed that public dissatisfaction with the Complaints Commission and resort to court action is problematic due to the high number of defamation cases against media practitioners that have earned Nairobi the dubious title of the 'libel capital' of Africa.[303] Accessibility of the Commission also presents a challenge as the office is situated in Nairobi. Although the Commission has leveraged technology by establishing filing of complaints online, the lack of decentralization remains a barrier.

4.9 The Kenya Information and Communication Act (KICA)

This is an Act of Parliament to provide for the establishment of the Communications Commission of Kenya, to facilitate the development of the information and communications sector (including broadcasting, multimedia, telecommunications and postal services) and electronic commerce to provide for the transfer of the functions, powers, assets and liabilities of the Kenya Posts and Telecommunication Corporation to the Commission, the Telcom Kenya Limited and the Postal Corporation of Kenya, and for connected purposes.

4.9.1 Provisions Affecting Freedom of Expression

Since its enactment, KICA has undergone a series of amendments effected by Parliament through Statute Law (Miscellaneous Amendment) Acts. Some of these amendments were subsequently challenged in court and found to be unconstitutional. Although Kenya Law regularly compiles court decisions and aims to update the online database of statutes in the Laws of Kenya accordingly, the requisite changes to KICA are yet to be reflected on the Kenya Law website. In light of this, for a coherent analysis of the current status of the Act with respect to provisions affecting freedom of expression, these provisions will be discussed concurrently with impugned sections of the Act that need to be expunged in compliance with court rulings on their unconstitutionality. The outcome of the following petitions will be considered in this respect:

297 Principle 17, Declaration of Principles on FoE in Africa
298 https://www.refworld.org/docid/59fc67da6.html
299 https://khusoko.com/2020/03/10/bbi-why-media-council-of-kenya-needs-to-be-constitutional- commission/
300 https://www.nation.co.ke/kenya/news/make-media-council-regulatory-commission-editors-say-258970
301 Media Council of Kenya, Complaints Portal, Status of received complaints https://www.mediacouncil.or.ke/en/mck/index.php/complaints2
302 https://www.nation.co.ke/kenya/news/make-media-council-regulatory-commission-editors-say-258970
303 https://www.article19.org/data/files/medialibrary/37750/Kenya_research_report_A5_ALL_v2.pdf

Okiya Omtatah Okoiti v Communications Authority of Kenya & 21 others [2017] eKLR, (hereafter the "Okiya Omtatah Petition") sections 2, 5B (5) 27D, 40 (1), 46 (1) (b), 46 (3), 83C (2), 83V, 84 W (4), 84W (5) AND 85A (3) of KICA were declared unconstitutional. This petition challenged the constitutionality of the Statute Law (Miscellaneous Amendments) Act of 2015 for making substantive changes to KICA that limited fundamental rights and freedoms. The court held that although "there is no internationally accepted position on the legality of omnibus bills," Statute Law Miscellaneous legislation should only be used for minor amendments that are non- controversial.

Cyprian Andama v Director of Public Prosecution & another; Article 19 East Africa (Interested Party) [2019] eKLR (hereafter the "Cyprian Andama Petition") section 84 D of KICA was declared unconstitutional.

Geoffrey Andare v Attorney General & 2 others [2016] eKLR, (hereafter the "Geoffrey Andare Petition"), section 29 of KICA was declared unconstitutional.

In *Kenya Union of Journalists v CA (High Court, 7 Nov 2024),* the High Court nullified parts of KICA and CA's broadcasting code. Specifically declared sections 46A(i), 46A(j), and 46H(i) of KICA unconstitutional. The court held that CA overstepped its mandate by regulating media content. This violated Article 34 (media freedom and independence) of the Constitution.

In *Katiba Institute v CA (High Court, 18 July 2025*), the Court struck down the CA directive requiring mandatory disclosure of mobile phone IMEI numbers. Held: It violates the right to privacy (Article 31)

In ICJ Kenya & Others v CA (High Court, May 2025 – ongoing), Civil society sued CA over the June 25, 2024, internet shutdown and the blocking of Telegram during exams. Interim Orders (14 May 2025) - High Court barred CA, government, Safaricom & Airtel from shutting down internet, as well as shutting down/throttling/blocking platforms

Section 3 of the Act establishes the Communications Authority of Kenya (CAK) and section 5A provides that the Authority shall be independent and free of control by government, political or commercial interests in the exercise of its powers and in the performance of its functions.

Under Section 5B, the Authority is required to comply with the provisions of Articles 34(1) and (2) of the Constitution on freedom of the media in discharging its functions. Section 5B(2) restates the constitutional requirement that the right to freedom of the media and expression may be limited only in accordance with Article 24 of the Constitution. Such limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. Subsection (5) provides that the Cabinet Secretary, in consultation with the Authority, may make regulations for the better carrying out of the provisions of this section.

Section 5B (5) was challenged in the Okiya Omtatah Petition on the basis that the requirement of the Authority to consult with the Cabinet Secretary flouts Article 34 (5)(a) of the Constitution and Section 5A of KICA, which establishes the independence of the Authority. Prior to the amendment introducing Section 5B via the Miscellaneous Amendments in 2015, the Authority was not required to consult the Cabinet Secretary in exercising its functions. The court held in favor of the petitioner and found that contrary to the Respondents' assertion that the word "consultation" merely referred to seeking of an opinion and did not interfere with the independence of the Authority, there is "a world of a difference" between the Cabinet Secretary being notified of an action taken by the Authority on one hand and the obligation that the latter consults with the former on the other hand.

Section 6 establishes The Board of the Authority, which shall consist of the following members:

a) *A chairperson appointed by the President;*
b) *The Principal Secretary is responsible for matters relating to broadcast, electronic, print and all other types of media;*
c) *The Principal Secretary responsible for matters relating to finance;*
d) *The Principal Secretary responsible for matters relating to internal security*
e) *Seven persons appointed by the Cabinet Secretary.*

Under subsection (2) in appointing the seven persons, the Cabinet Secretary is required to ensure that the appointees reflect the interests of all sections of society, equal opportunities for persons with disabilities and other marginalised groups, and that not more than two-thirds of the members are of the same gender.

Section 6A sets out the qualifications for the appointment of the chairperson and members of the Board. The tenure of office for the chairperson and Board members is set at three years, renewable once.[379] The functions of the Board are outlined in section 7 to include: managing the assets of the Commission, receiving grants and donations to the Commission and disbursing monies therefrom, financial management of the Commission, including opening of banking accounts, determining provisions to be made for capital and recurrent expenditure of the Commission and making investments, establishing a broadcasting standards committee or any other relevant committees.

Section 11 establishes the office of the Director General, who shall be the chief executive officer of the Authority, responsible for the day-to-day management of the Authority. The Board is mandated to recruit and appoint the Director through a competitive process.

Part III of the Act regulates telecommunication services and sets out the Authority's role in issuing telecommunication licenses.

The Kenya Information and Communication (Amendment) Bill, 2025, has proposed one of the most controversial provisions by introducing an amendment to Section 27A of the Kenya Information and Communications Act. The proposed Section 27A(3C) requires internet service providers to operate a "meter billing system" that shall: assign each customer a unique and identifiable meter number; monitor customer usage; convert customer usage into readable details; create invoices based on consumption; and allow users to verify invoices.

Proposed Section 27A(3D) further requires Internet Service providers (ISPs) to submit to the Communications Authority, at least once every financial year, information relating to billing systems including internet meter numbers issued to subscribers. Media actors and digital rights organizations argue that these provisions create a framework for state surveillance and monitoring of online activity. ICJ Kenya observed that linking internet users to traceable meter numbers and monitoring internet usage patterns may enable profiling, tracking and targeting of journalists, activists, dissenters and political critics.

Section 27D provides that the Cabinet Secretary, in consultation with the Authority, may make regulations with respect to -

a) Procedure for SIM-card registration;
b) Timelines for SIM-card registration, storage and retention of subscriber records;
c) Confidentiality and disclosure of subscriber information
d) Registration of minors;
e) Transfer of SIM cards;
f) Registration particulars;
g) Suspension and deactivation of SIM-cards; and
h) Any other matter that may be prescribed under this sub-Part.

This was among the sections found unconstitutional in the Okiya Omtatah petition because of the obligation placed on the Authority to consult with the Cabinet Secretary.

Section 29 creates an offence of improper use of a licensed telecommunication system when a person uses such a system -

a) Sends a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
b) Sends a message that he knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person,

The penalty for the offence shall be a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or to both.

The Court declared Section 29 to be unconstitutional in the Geoffrey Andare Petition. The section was challenged on the basis that the criminal offence is phrased in vague, broad terms and has a chilling effect on the exercise of freedom of expression. The court ruled in favor of the petitioner by finding that the words *'grossly offensive'*, *'indecent' obscene'* or *'menacing character'* were ambiguous and further that it was unclear who would determine the messages that cause 'annoyance', 'inconvenience', 'needless 'anxiety' since these terms were not defined in the Act, thus rendering their meaning open to subjective interpretation. This contravened the requirement of certainty in legislation, creating criminal offences.

Other offences related to telecommunication services under Part III of the Act include: obtaining telecommunication services dishonestly, modification of messages by a person engaged in the running of a licensed telecommunication system, tampering with a communication plant and operation of an unlicensed telecommunication system. [380]

Part IV of the Act regulates radio communication and provides procedures relating to acquisition of a radio communication license.

Section 40 (1) provides that the Cabinet Secretary, in consultation with the Authority, may develop regulations that prescribe technical requirements to be complied with in the case of radio communication apparatus. The issue of "consultation" by the Authority was considered by the Court in the Okiyah Omtatah Petition and rendered the section unconstitutional. This court decree was applicable to Sections 46 (1) (a) and 46 (3) of the Act outlined below.

Section 46 (1) states that the provisions relating to radio communication shall apply:

a) To all radio communication stations and radio communication apparatus in or over, or for the time being in or over Kenya or the territorial waters adjacent thereto; and

b) Subject to any limitations which the Cabinet Secretary, in consultation with the Authority may, by regulations, determine, to all radio communication stations and radio communication apparatus which is released from within Kenya or its territorial waters, or from any vessel or aircraft which is registered in Kenya.

Subsection (3) provides that the Cabinet Secretary, in consultation with the Authority, may make regulations for the use of radio communication apparatus on board a vessel or aircraft not registered in Kenya while the vessel or aircraft is within the territorial limits of Kenya or its territorial waters.

Part IVA of the Act regulates broadcasting services which are classified into public, private and community broadcasting; the procedures for granting of licenses for the last two categories are outlined in this part while for public broadcasting, section 46E designates The Kenya Broadcasting Corporation established under section 3 of the KBC Act as the public broadcaster.

Part VIA of the Act regulates electronic transactions and cyber security. Section 83C

(1) outlines the functions of the Authority in this regard; this includes developing a framework for facilitating the investigation and prosecution of cybercrime offences, among other functions. Subsection (2) provides that the Cabinet Secretary in consultation with the Authority may make regulations with respect to cyber security. This subsection was found to be unconstitutional in the Okiya Omtatah Petition.

Section 84D creates the offence of publishing obscene information in electronic form and provides as follows:

Any person who publishes or transmits or causes to be published in electronic form, any material which is lascivious or appeals to the prurient interest and its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied therein, shall on conviction be liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years, or both.

The Cyprian Andama Petition challenged Section 84D on the basis that the section is vague with regard to the meaning of "lascivious" or "appeals to the prurient interest" or "tends to deprave and corrupt persons" and violates Article 50(2)(b) of the Constitution which requires that every accused person has the right to be informed of a charge with sufficient detail in order to answer to the charge. Further, the lack of a precise definition of the terms constituting the charge would result in the arbitrary arrest of innocent persons charged under the section.

The court found that the section infringes on citizens' right to freedom of expression as guaranteed in the Constitution and that the broad terminology describing the offence invites arbitrary interpretation, thereby violating the right to a fair hearing, which is a non-derogable right. The Court further stated that;

"A provision such as Section 84D of KICA is too retrogressive to fit into the modern, open and democratic society envisaged under the current Constitution. The impugned section is too wide in scope, punitive in intent and suppressive in effect to be tolerated by our transformative Constitution"[381]

PART VIC of the Act relates to fair competition and equal treatment. Section 84Q prohibits anti-competitive conduct in connection with any business activity relating to licensed services. The Authority is mandated under Section 84R to ensure that there is fair competition in the sector; this includes development and enforcement of fair competition and equality of treatment among licensees.

Under Section 84W (1) The Cabinet Secretary is permitted to make regulations with respect to competition issues in consultation with the Commission. Subsection (4) provides that the Authority may, in consultation with the Competition Authority and after due process declare a person or institution, by notice in the Gazette, to be a "dominant telecommunications Service provider" for the purposes of the Act. This section should be read along with section 2 of KICA which defines a "dominant telecommunications service provider" as *a licensee determined to be a dominant telecommunications service provider pursuant to the criteria set out in sections 4 and 23 of the Competitions Act, 2014.*

Section 84W (5) provides that in making a declaration under subsection (4), the Authority shall, in consultation with the Competition Authority, consider -

c) *The market share of the telecommunications service provider being at least fifty percent of the relevant gross market segment;*
d) *Significant market power enjoyed by the telecommunications service provider; and*
e) *Any other consideration the Authority may determine.*

The court in the Okiya Omtatah Petition found sections 84W (4) and (5) to be unconstitutional on account of the fact the provisions obliged the Communications Authority to consult with both the Cabinet Secretary and the Competition Authority before exercising some of its mandate, thereby eroding its independence.

Section 102 of the Act establishes the Communication and Multimedia Appeals Tribunal. The Tribunal derives its mandate from subsection (1) on complaints to be adjudicated by the Tribunal relating to:

a) *Any publication by or conduct of a journalist or media enterprise;*
b) *Anything done against a journalist or media enterprise that limits or interferes with the constitutional freedom of expression of such journalist or media enterprise; or*
c) *Any action taken, any omission made or any decision made by any person under this Act.*

Under Section 102E (1) the tribunal, upon hearing parties to complaint is empowered to make a number of decisions among them being; imposing a fine of not more than twenty million shillings on any respondent media enterprise and a fine of not more than five hundred thousand shillings on any journalist adjudged to have violated KICA; and recommending the suspension or removal from the register of the journalist involved.[382]

Section 102F (1) provides that unless expressly provided by KICA, the Media Council Act or any other law, decisions made by the Media Council and the Communications Authority pursuant to the respective laws or any other written law shall be subject to an appeal to the Tribunal in accordance with such procedures established by the Tribunal.

Subsection (2) provides that any person who is aggrieved by an action or decision of the Media Council, the Authority or a person licensed under KICA may make a claim or appeal to the Tribunal within sixty days of the decision in respect of which a complaint is being made. Under subsection (3), following an appeal, the Tribunal may make any of the following decisions:

a) *Confirm, set aside or vary the order or decision in question;*
b) *Exercise any of the powers which could have been exercised by the Media Council or the Authority in the proceedings in connection with which the appeal is brought; or*
c) *Make another order, including an order for costs, as it may consider necessary.*

Section 102G provides for a right of appeal to the High Court for any person aggrieved by a decision or order of the Tribunal within thirty days of such a decision or order.

4.9.2 Extent of Compliance with International Human Rights Standards

KICA gives the President or the Cabinet Secretary the final say in appointments to the Board of the Communications Authority. The requirement under section 6(2) for the Cabinet Secretary to appoint seven members of the Board gives the executive wide discretionary power in determining the composition of the Board.

This contravenes human rights standards requiring that the appointment of officials to such a regulatory body should be subject to a transparent process that involves other relevant stakeholders.[383] Furthermore, although the independence of the Communications Authority is guaranteed by the Constitution under article 34 (5) (a) and Section 5A of KICA, the membership of the board as constituted under section 6 ostensibly negates this independence.

Section 102E (1) (f) imposes punitive sanctions for media enterprises and journalists of fines of up to Kshs. 20 million and Kshs. 500,000 shillings respectively for violations of KICA provisions. Regional human rights standards require that for a limitation on the exercise of freedom of expression to be necessary and proportionate, the least restrictive means should be used to achieve the aim of the limitation and that the benefit of protecting the interest outweighs the authorized sanction.[304] The penalties imposed on media enterprises and journalists are disproportionately punitive, and their application would unjustifiably limit the exercise of freedom of expression.

Challenges and Impact on Civic Space

The composition of the Board of the Communications Authority does not insulate the Authority from government control. The executive has previously acted with impunity on matters relating to the regulation of the telecommunication sector. A case in point was the Authority's decision to switch off the signals of three media houses to disable the transmission of a mock swearing-in ceremony for the opposition leader, Raila Odinga, following the contested 2017 elections.[305] Interference with the independence of the Authority has serious ramifications for the exercise of freedom of the media and expression. Other related challenges with respect to the Authority and government interference are aptly illustrated below:

> *"While the authority's independence is provided for under section 5 of the Kenya Information and Communications Act (KICA), tensions between the ICT Ministry and the board of directors on one side, and the director general of the CA on the other, have flared up in recent years. The two sides disagreed about how to implement a report on Safaricom's market dominance. Requests were also made for funds from the CA that the director general said were improper, such as the permanent secretary's demand that CA funds be used for the presidential swearing-in ceremony. Additionally, in April 2018, the president ordered the transfer of 1 billion Kenyan shillings ($10 million) from the Universal Service Fund (USF) managed by the CA to the Directorate of Criminal Investigation (DCI) to fight cybercrime."*[306]

Media stakeholders were opposed to the establishment of the Multi-Media Appeals Tribunal in KICA due to the duplicative role of the Tribunal with the Complaints Commission under the Media Council Act and the heavy sanctions that are imposable by the Tribunal. Although the Court in petition did not find the co- existence the two-dispute resolution mechanism to be unconstitutional, it noted that provisions in the two Acts creating these mechanisms to "demonstrate muddled thinking and drafting."[387]

4.10 Defamation Act

The preamble of the Defamation Act states that the objective of the statute is to "consolidate and amend the Statute law relating to libel, other than criminal libel, slander and other malicious falsehoods." The scope of the Act is therefore limited to civil rather than criminal defamation. It is noteworthy that the Penal Code proscribed defamation, and the criminal sanctions for defamation were historically used by the state in Kenya to unjustifiably limit the freedom of expression. Section 94 of the Penal Code, which provides for the offence of criminal defamation, was held unconstitutional in a progressive court decision lauded for safeguarding freedom of expression, in line with international standards on decriminalizing defamation.[307]

4.10.1 Provisions affecting Freedom of Expression

The Defamation Act does have a definition for defamation; the Act provides redress for actions related to 'libel' and 'slander', but neither of these two terms is defined.[308] There are three forms of slander listed in the Act for which special damages need not be alleged or proven by the affected party initiating civil action.

304 Principle 9, Declaration of principles on Freedom of Expression and Access to Information in Africa

305 https://www.aljazeera.com/indepth/opinion/putting-kenya-media-shutdown-context- 180202092850790.html

306 https://www.justice.gov/eoir/page/file/1234671/download

307 https://www.article19.org/resources/kenya-court-strikes-down-criminal-defamation-laws/

308 "Libel and slander are forms of defamation, which is an untrue statement presented as fact and intended to damage a person's character or reputation. Libel is a defamatory statement made in writing, while slander is a defamatory statement that is spoken." https://www.britannica.com/story/whats-the-difference-between-libel-and-slander

These include: slander affecting official, professional or business reputation, slander of women with respect to words imputing unchastely character and slander of title, slander of goods or other malicious falsehood. [391]

Section 6 of the Act insulates newspaper reporting of judicial proceedings by providing that fair and accurate reports of judicial proceedings are absolutely privileged. This section does not, however, authorize the 'publication of any blasphemous, seditious or indecent matter'. Section 7 provides for qualified privilege of newspaper publications unless it is proven that a publication was made with malice. Additionally, the privilege is not applicable where the defendant, upon request by the plaintiff, refuses or neglects to publish a 'reasonable letter or statement by way of explanation or contradiction' in the newspaper where the original publication was made.

Section 7A provides for a right of reply for any person or entity whose character, reputation or good standing has been damaged as a result of a factual inaccuracy about them published in a newspaper. Such a right of reply is required to be published free of charge in the next possible edition of the newspaper and should be of similar prominence to the original publication. The party seeking to exercise a right of reply should make the request in writing to the newspaper publisher within fourteen days of the publication, and this right is not exercisable after a period of 6 months from the date of publication has lapsed. The court has discretion to award additional damages in civil proceedings where a right of reply is deemed reasonable and a publisher either refuses or neglects to publish a correction or fails to give the requisite prominence. The Act considers wireless broadcasting as publication in a permanent form.

Section 12 provides for a defense of publication without malice in an action for libel with respect to a newspaper or any other periodic application. The defense is applicable where a defendant is able to demonstrate that the publication was done without malice and gross negligence and that prior to the civil action, a full apology for the libel was published.

The Act provides for a defense of unintentional defamation where defamatory words are published innocently and the publisher (defendant) makes an offer of amends to the affected party (plaintiff); if the plaintiff accepts the offer, no action can be taken against the defendant with respect to the defamatory words. If the plaintiff does not accept the offer of amends, the defendant shall have a valid defense of unintentional defamation subject to having made the offer to the plaintiff within a reasonable period after receiving notice from the plaintiff of the defamation. Other defenses to libel include justification and fair comment.

The award for damages by a court in an action for libel shall be dependent on the severity of the offence in respect of which defamatory words have been published. Section 16 A provides for a minimum threshold of damages; if the offence is punishable by death, the award shall not be less than one million shillings, and where the libel is in respect of an offence punishable by imprisonment for a term of not less than three years the amount assessed shall not be less than four hundred thousand shillings.

4.10.2 Extent of compliance with International Human Rights Law

Respect for others' reputations is a legitimate restriction on the exercise of freedom of expression under international human rights law. As with any other limitation of rights, however, protection of reputation must be subject to the test of legality, necessity and proportionality. According to the Principles on Freedom of Expression and Protection of Reputation, such restrictions must firstly be prescribed by law - the legal provisions should be unambiguous enough to enable prediction with reasonable certainty as to whether certain actions are legal or not. Secondly, protection of the reputation of others should have a 'genuine purpose and demonstrable effect of protecting a legitimate reputation interest', and thirdly, it must be necessary in a democratic society. The latter effectively means that the pursuit of protecting reputations should not significantly outweigh the harm ensuing from limiting the exercise of freedom of expression.[309]

The lack of definition of terms relating to defamation, such as libel and slander, in the Act offends the first test of legality, as there is no recourse in the Act to enable a reasonable assessment of whether certain actions fall within the prescribed parameters of defamation. This ambiguity creates a loophole that can be open to abuse and prejudice in the exercise of freedom of expression. The absolute privilege accorded to the reporting of judicial proceedings under section 6 of the Act is in line with international standards that exempt such reporting from liability under defamation laws.[310]

309 Principles on Freedom of Expression and Protection of Reputation, Principles 1.1-1.3

310 Defining Defamation: Principles on Freedom of Expression and Protection of Reputation https://www.article19.org/data/files/medialibrary/38641/Defamation-Principles-(online)-.pdf Principle 11 (a)(iii)

The defense of publication without malice provided under section 12 is not absolute given the qualification that in the absence of malice and gross negligence, the defendant should have published a full apology for the libel prior to the civil action. This defense falls short of the international standard requiring that statements made on account of public interest should be exempt from liability; these include statements made in the performance of a 'legal, moral or social duty or interest.'

The minimum threshold for the award of damages under the Act exclusively protects the plaintiff's rights and gives the court wide discretionary powers to issue high awards against the defendant. The proportionality test demands that the remedies or sanctions prescribed for defamation must not be excessive, as this would 'significantly limit the free flow of information and ideas.' The goal for such remedies and sanctions is not to punish the person responsible for the defamation but rather to redress the harm occasioned to the plaintiff. Pecuniary compensation must therefore be proportionate to the harm done by the defamation and should only be awarded where non-pecuniary remedies are insufficient to remedy the harm.

Challenges and Impact on Civic Space

Whereas the decriminalization of defamation in Kenya was a laudable step that relegated defamation to civil proceedings, provisions of the Defamation Act need to be aligned with international standards in order to strengthen the safeguards for freedom of speech with respect to matters of public interest. The award of disproportionate costs for defamation in civil suits presents a serious challenge for human rights defenders and whistleblowers and could heighten self-censorship in matters of public interest to avoid personal liability. The case of *Christopher Ndarathi Murungaru v John Githongo* [2019] eKLR, in which a renowned human rights defender and whistleblower, John Githongo, was ordered to pay Kshs. 27,000,000 to the plaintiff, a former cabinet minister, for defamation, illustrates this. In addition, the court ordered that the defendant pay the full costs of the suit and that the exorbitant award be subject to interest from the date the judgment was issued. The defamation suit was based on allegations of corruption made in a dossier on the Anglo-Leasing corruption scandal.

Rather than suing the newspaper that published the dossier, the suit was brought against John Githongo in what was criticized as an attempt to muzzle him and use the case to financially cripple him. The lack of a law protecting whistleblowers in Kenya further reinforces the need to protect those who speak in the public interest.[311] This court decision contravenes international human rights standards to the effect that legitimate criticism of public officials for wrongdoing or corruption should not be used to justify the effect of defamation laws.

4.11 Books and Newspapers Act

This is colonial legislation whose primary objective is to make provision for the registration, deposit and printing of books and newspapers as well as the execution of bonds by printers and publishers of newspapers. In fact, the word "Colony" which refers to the territory of Kenya at the time, remains in use in the statute. It has undergone several amendments over the years till at some point in the late 1980's. It does not make any express provision for limitation of a fundamental freedom or right guaranteed in the Constitution of Kenya.

4.11.1 Provisions Affecting Freedom of Expression

Most provisions of the Books and Newspapers Act concern procedural requirements for the registration, printing, deposit, and return of books and newspapers published in Kenya. The legislation requires publishers and printers to furnish copies of publications to the Registrar of Books and Newspapers and maintain proper registration records.

The Act also guarantees public access to information maintained by the Registrar. Any person may inspect the register of books and newspapers, inspect deposited publications, and obtain certified copies of documents upon payment of the prescribed fee. These provisions support transparency and facilitate access to information.

However, a significant concern arises from the requirement that publishers of newspapers execute a bond of Kshs. 1 million as security against damages, penalties, fines, or legal costs arising from publication-related proceedings. At the time the legislation was enacted, this amount represented an extremely high financial threshold that could effectively prevent individuals or small entities from establishing newspapers.

311 https://www.theelephant.info/op-eds/2019/05/27/in-whose-interest-reflecting-on-the-high- court-ruling-against-john-githongo/

This requirement creates a substantial economic barrier to entry into the media sector and disproportionately affects independent publishers, community newspapers, and small media enterprises. Such financial conditions may discourage individuals from exercising their freedom of expression through print media and limit media diversity and pluralism.[312]

The provision is particularly problematic because the imposition of damages, penalties, or costs is ordinarily a matter for judicial determination after due legal process. Requiring a large financial bond prior to publication effectively imposes a pre-emptive burden on media actors without proof of wrongdoing.

4.11.2 Extent of Compliance with International Human Rights Law

General Comment No.34 on Article 19 of the ICCPR by the Human Rights Committee provides that:

> *"A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society."*[416]

The requirement of newspapers to execute a bond of Kshs.1 million is a hindrance to the freedom of expression and freedom of the media.

Challenges and Impact on Civic Space

The requirement for newspapers to execute a bond of Ksh.1 million shillings limits the freedom of expression and the freedom of the media in Kenya. There is no justification for this requirement.

4.12 Access to Information Act

The object and purpose of this legislation is to:

a) *give effect to the right of access to information by citizens as provided under Article 35 of the Constitution;*
b) *Provide a framework for public entities and private bodies to proactively disclose information that they hold and to provide information on request in line with the constitutional principles;*
c) *Provide a framework to facilitate access to information held by private bodies in compliance with any right protected by the Constitution and any other law;*
d) *Promote routine and systematic information disclosure by public entities and private bodies on constitutional principles relating to accountability, transparency and public participation and access to information;*
e) *Provide for the protection of persons who disclose information of public interest in good faith; and*
f) *Provide a framework to facilitate public education on the right to access information under this Act.*

The legislation confers upon the Commission on Administrative Justice, powers of oversight and enforcement under the Act.

4.12.1 Provisions Affecting Freedom of Expression

The Access to Information Act strongly advances freedom of expression by operationalizing Article 35 of the Constitution, which guarantees the right to access information. Section 4(1) provides that every citizen has the right to access information held by the State and by another person where the information is required for the exercise or protection of a right or fundamental freedom. Section 4(2) further provides that an applicant is not required to justify the reasons for seeking information.

The Act promotes proactive disclosure of information through Section 5, which requires public entities to publish and publicize information of public interest. Sections 8 and 9 establish procedures and timelines for requests for information, while Section 14 provides review and appeal mechanisms through the Commission on Administrative Justice.

However, Section 6 limits access to information in situations involving national security, privacy, commercial interests, ongoing investigations, legal proceedings, and professional confidentiality. Although these limitations pursue legitimate objectives, some provisions are broadly framed and may be susceptible to abuse, particularly exemptions relating to national security and deliberative governmental processes.

312 Article 19 Eastern Africa. (2016). Media regulation and freedom of expression in Kenya.

4.12.2 Extent of Compliance with International Human Rights Law

The ICCPR states that the right to freedom of expression includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. The Access to Information Act guarantees the right to access to information and defines information to include all records held by a public entity or a private body, regardless of the form in which the information is stored, its source or the date of production. This definition is consistent with the provisions of the Covenant.

In General Comment No.34 on Article 19 of the ICCPR, the Human Rights Committee stated that "to give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures by which one may gain access to information, such as through freedom of information legislation. The procedures should ensure the timely processing of requests for information in accordance with clear rules compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests."[313]

The Access to Information Act sets out an elaborate procedure for applying for access to information, processing the application, and providing the information requested, with specified timelines. It also provides that no fee may be levied in relation to the submission of an application and that a public entity or private body from which an application for access to information has been made may charge a prescribed fee for the provision of the information, and the fee shall not exceed the actual costs of making copies of such information and, if applicable, supplying them to the applicant.

The Human Rights Committee also stated that "every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. It also provides that every individual should be able to ascertain which public authorities, private individuals, or bodies control or may control his or her files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to have his or her records rectified. The Access to Information Act provides that "at the request of the applicant, a public entity or private body shall, within a reasonable time, at its own expense, correct, update or annotate any personal information held by it relating to the applicant, which is out of date, inaccurate or incomplete."

From a legislative perspective, the Access to Information Act complies with the provisions of the ICCPR regarding the right of access to information.

Challenges and Impact on Civic Space

The Access to Information Act has significantly strengthened transparency, public accountability, investigative journalism, and civic participation in Kenya. Civil society organizations, journalists, and citizens increasingly rely on the Act to obtain government records and information of public interest. Despite these gains, delays in processing requests, institutional resistance to disclosure, bureaucratic inefficiencies, and broad reliance on national security exemptions continue to limit the practical realization of the right to information.

The Access to Information (General) Regulations, 2021, facilitate implementation of the Act by establishing standardized procedures for requesting information, requiring designation of Access to Information Officers, encouraging proactive disclosure, and promoting digitization of records and electronic access to information. The regulations also reinforce the principle that fees charged for access to information should not exceed the actual cost of reproducing and supplying information. These provisions enhance transparency, accountability, and administrative efficiency.

However, the regulations may also impede access to information through procedural complexity, administrative delays, and broad reliance on exemptions under Section 6 of the Act. Delays caused by transfers, extensions, and bureaucratic procedures may undermine timely access to information, particularly in urgent public interest matters. Further, weak enforcement mechanisms, institutional resistance to disclosure, and inadequate record management systems continue to limit effective implementation of the Act and regulations.

313 Article 19(2)

4.13 Witness Protection Act

The Witness Protection Act was enacted to protect witnesses in criminal proceedings and other legal processes and to establish the Witness Protection Agency (WPA). The Agency is mandated to provide special protection measures to persons who possess important information and who face threats, intimidation, or reprisals arising from their cooperation with law enforcement agencies, prosecutors, or courts.

The Act establishes the legal and institutional framework governing admission into the witness protection program, management of protected identities, operational confidentiality, and security procedures. Its primary objective is to safeguard the integrity of criminal justice while protecting witnesses whose safety may be endangered.

Because witness protection inherently depends on secrecy, confidentiality, and security, the Act contains extensive provisions that limit the disclosure of information and restrict certain aspects of freedom of expression and access to information.

4.13.1 Provisions Affecting Freedom of Expression

By its very nature, witness protection requires restricting freedom of expression and freedom of information to safeguard the security of witnesses, persons closely connected to them, and officers who work under the program. Consequently, the entire framework of the Witness Protection Act is designed to limit disclosure of information that is likely to compromise the integrity of the program. There are express provisions in the legislation to this effect.

The legislation gives the WPA power to request courts to employ the following protective measures in the course of proceedings:

a) *Holding in camera or closed sessions;*
b) *The use of pseudonyms;*
c) *The reduction of identifying information;*
d) *The use of video link; or*
e) *Employing measures to obscure or distort the identity of the witness.*[314]

It also prohibits the disclosure, in court proceedings, of the new identity given to a witness under the program.[315]

Where a new identity is given to a witness or other participant in the program and a new entry is made in the register of births, deaths or marriages, the legislation outlaws the disclosure of such information except where it is done in compliance with an order of the High Court, as part of an investigation by the Director of Public Prosecutions or implementation of the Act.[316] Except as otherwise provided by an order of the High Court, a person who acquires knowledge or information as a result of association or connection, duty or service with the program or the Agency is not compellable, in proceedings in a court, tribunal or commission of inquiry, to produce any document or to divulge or communicate a matter or a thing related to the exercise of functions under the Act or the protection of witnesses included in the program.[317]

The legislation also safeguards the non-disclosure of a participant's former identity by that person or by another person who has come into contact with the program.[318] The disclosure of information about the identity or location of a participant under the program or information which compromises the security of such a person is an offence under the Act.[319]

The legislation permits the Cabinet Secretary responsible for Internal Security to prohibit or control access to land or premises under WPA control.[320] It also prohibits the publication or disclosure to another person of the contents of a document, communication, or information that the WPA itself has not made public without the written consent of, or on behalf of, the Agency.[321]

314 Section 4(3)
315 Section 24
316 Section 22
317 Section 32
318 Section 23
319 Section 30
320 Section 30D
321 Section 30E

The legislation outlaws a person who is or was a participant or a witness considered for inclusion in the program from disclosing or communicating:

a) the fact that he or a member of his family has entered a memorandum of understanding under section 7 of the Act;
b) details of the memorandum of understanding;
c) information relating to anything done by the Director or any officer under the Act; or
d) information about any officer gained by the person as a result of anything done under the Act[442]

4.13.2 Extent of Compliance with International Human Rights Law

The Witness Protection Act is broadly consistent with international human rights standards, permitting limited restrictions on freedom of expression and public access to proceedings where necessary to protect the interests of justice, security, and privacy.

Article 14(1) of the International Covenant on Civil and Political Rights provides that:

> *"The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*

The confidentiality measures established under the Witness Protection Act may therefore be justified as "special circumstances" necessary to prevent prejudice to the administration of justice and protect the safety of witnesses.

Similarly, international criminal justice systems, including the International Criminal Court, recognize the importance of witness protection measures such as anonymity, closed sessions, and protected testimony in cases involving organized crime, terrorism, human rights violations, and corruption.

However, international human rights law also requires that restrictions on freedom of expression and access to information remain lawful, necessary, and proportionate. Excessive secrecy or lack of accountability mechanisms may undermine transparency, fair trial rights, and public confidence in justice institutions.

Although the Witness Protection Act includes internal complaints and appeals mechanisms, concerns remain about the limited external oversight of the Agency's operations.

Challenges and Impact on Civic Space

The implementation of witness protection programs is resource-intensive. However, the Witness Protection Agency has frequently faced inadequate budgetary allocations, which have limited its operational capacity. Insufficient funding affects the Agency's ability to:

- Process applications promptly;
- Relocate witnesses safely;
- Maintain adequate safe houses;
- Provide sustained protection services; and
- Expand outreach and awareness programs.

Budgetary limitations also contribute to delays in admission into the program, which may expose witnesses to heightened danger during critical periods. In practice, civil society organizations have occasionally been compelled to provide interim support and emergency interventions for threatened witnesses pending action by the Agency.

Further, dependence on state funding may affect institutional independence where politically sensitive cases are involved, particularly in cases relating to corruption, extrajudicial killings, organized crime, or abuses by state actors.

The primary mechanism for addressing grievances under the Act is the Witness Protection Complaints Committee, with further appeal to the High Court. However, the opaque nature of the program makes it difficult for civil society actors, journalists, or human rights organizations to assess whether witnesses are treated fairly or whether protection measures comply with constitutional standards.

4.14 Preservation of Public Security Act

4.14.1 Provisions Affecting Freedom of Expression

The legislation states that the preservation of public security may make provision for "the censorship, control or prohibition of the communication of any information, or of any means of communicating or of recording ideas or information, including any publication or document, and the prevention of the dissemination of false reports."[444] While it is essential that the dissemination of false reports be prohibited and controlled, the rest of this provision gives room for a blanket limitation of the right to freedom of expression and freedom of information.

4.14.2 Compliance with International Human Rights Law

As mentioned above, the limitation on freedom of expression in the Preservation of Public Security Act is overly broad. In General Comment No. 34 on Articles 19 and 20, the UN Human Rights Committee provided guidelines prohibiting this.

> *"34. Restrictions must not be overbroad. The Committee observed in general comment No. 27 that "restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected… The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law". The principle of proportionality must also take account of the form of expression at issue as well as the means of its dissemination. For instance, the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.*
>
> *35. When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat."*

Challenges and impact on civic space

The imposition of measures for the preservation of public security is within the discretion of the President. It depends on the character and motives of the person in office and has potential for abuse in the era of oppressive regimes. If the President wishes to limit freedom of expression and access to information, he needs only to invoke his broad discretionary powers under this legislation.

4.15 Whistleblower Protection Bill, 2023

The Whistleblower Protection Bill, 2023, seeks to establish a legal and institutional framework for the protection of whistleblowers in Kenya. The Bill is intended to promote transparency, accountability, integrity, and good governance by encouraging the disclosure of information concerning corruption, unlawful conduct, abuse of office, mismanagement of public resources, threats to public health and safety, and other matters of public interest.

The Bill aims to address longstanding gaps in Kenya's legal framework relating to the protection of persons who disclose wrongdoing in both public and private institutions. Prior to the Bill, whistleblower protections were scattered across various statutes, including anti-corruption, labour, and access-to-information laws, without a comprehensive, standalone framework. Bill, therefore, seeks to create mechanisms for:

- Reporting protected disclosures;
- Protecting whistleblowers from retaliation;
- Establishing confidentiality safeguards;
- Providing remedies for victimization; and
- Promoting institutional accountability.

By encouraging disclosure of information of public interest, the Bill has significant implications for freedom of expression, access to information, media freedom, and civic participation.

4.15.1 Provisions Affecting Freedom of Expression

The Whistleblower Protection Bill, 2023, substantially promotes freedom of expression by protecting individuals who disclose information concerning wrongdoing and matters of public interest.

Clause 4 of the Bill provides for the right to make protected disclosures concerning improper conduct. The Bill defines improper conduct broadly to include: Corruption; Abuse of authority; Criminal offences; Miscarriage of justice; Misuse of public funds; Threats to public health, safety, or the environment; and Violations of law.

Clause 5 further provides that a protected disclosure may be made where a person reasonably believes that the information disclosed tends to show improper conduct.

These provisions facilitate the constitutional freedom to seek, receive, and impart information under Article 33 of the Constitution.

Clause 12 imposes confidentiality obligations concerning the identity of whistleblowers. It provides that:

> *"A person shall not disclose information that may identify or lead to the identification of a whistleblower except in accordance with this Act."*

The clause further restricts disclosure of identifying information without the consent of the whistleblower unless disclosure is required by law or authorized by a court.

These protections are intended to encourage disclosures by reducing fear of retaliation or intimidation.

Clause 15 prohibits retaliatory action against whistleblowers. The clause provides that:

"A person shall not subject a whistleblower to occupational detriment, intimidation, harassment, discrimination, dismissal, suspension, demotion, or any other retaliatory action on account of a protected disclosure."

Clause 16 further entitles whistleblowers subjected to retaliation to seek remedies including compensation, reinstatement, injunctions, and other reliefs.

These provisions strengthen freedom of expression by creating legal safeguards for persons who disclose information of public interest.

Clause 7 establishes procedures for making disclosures to designated authorities, including public institutions, oversight agencies, and authorized bodies.

The Bill also permits external disclosures in circumstances where: Internal reporting mechanisms are ineffective; there is risk of concealment or destruction of evidence; The whistleblower reasonably fears retaliation; or the matter concerns serious and imminent danger to public interest.

These provisions facilitate accountability and transparency while enhancing public participation in governance.

Despite promoting transparency, the Bill also creates limitations concerning disclosure of certain categories of information.

Clause 9 restricts disclosure of: Classified information; Information affecting national security; Legally privileged information; Personal data protected by law; and information whose disclosure may prejudice investigations or judicial proceedings.

Although these restrictions pursue legitimate objectives, concerns may arise when national security or confidentiality exceptions are interpreted broadly to suppress disclosures of corruption, abuse of office, or human rights violations.

4.15.2 Extent of Compliance with International Human Rights Law

The Whistleblower Protection Bill, 2023, is broadly consistent with international human rights standards relating to freedom of expression, access to information, anti-corruption, and protection of human rights defenders.

Article 19 of the International Covenant on Civil and Political Rights guarantees the freedom to seek, receive, and impart information and ideas of all kinds.

The United Nations Human Rights Committee in General Comment No. 34 emphasized that protection of individuals contributing to public accountability and democratic oversight is an essential component of freedom of expression.

The Bill is also consistent with Article 33 of the United Nations Convention against Corruption (UNCAC), which encourages States Parties to provide protection against unjustified treatment for persons reporting corruption-related offences in good faith.

Similarly, Article 9 of the African Charter on Human and Peoples' Rights guarantees the right to receive and disseminate information within the law.

The Bill's provisions protecting whistleblowers from retaliation, preserving confidentiality, and facilitating disclosures therefore align with international principles of transparency, accountability, and democratic governance.

However, compliance with international standards will depend heavily on implementation, institutional independence, and effectiveness of protection mechanisms.

Challenges and Impact on Civic Space

The Whistleblower Protection Bill, 2023, has significant potential to strengthen civic space, democratic accountability, investigative journalism, and anti-corruption advocacy in Kenya.

By protecting disclosures of wrongdoing, the Bill encourages Public participation, civic oversight, investigative reporting, human rights monitoring, and institutional accountability.

Civil society organizations, journalists, anti-corruption bodies, and human rights defenders may benefit from increased access to information concerning abuse of power, corruption, and violations of public trust.

However, several practical challenges remain.

First, potential whistleblowers may still fear retaliation due to past experiences of intimidation, dismissal, harassment, or threats against those exposing corruption or abuse by powerful actors.

Second, broad confidentiality and national security exemptions under Clause 9 may be invoked to suppress disclosures in the legitimate public interest.

Third, weak institutional independence or political interference in investigative agencies may undermine public trust in the protection framework.

Finally, delays in investigations, weak enforcement of remedies, and inadequate protection systems may discourage whistleblowers from making disclosures.

Despite these concerns, the Bill represents an important step toward strengthening transparency, accountability, and civic participation in Kenya.

4.16 Penal Code

The Penal Code establishes the general criminal code in Kenya and creates numerous criminal offences relating to public order, morality, state security, reputation, religion, and public peace. Originally enacted during the colonial period, many of its provisions continue to reflect restrictive approaches to expression, association, and media freedom inherited from colonial governance structures.

The Penal Code contains several provisions that directly or indirectly limit freedom of expression, media freedom, access to information, and civic participation. Although some provisions pursue legitimate aims such as protection of public order, national security, and reputation, others have been criticized for being overly broad, vague, or incompatible with constitutional and international human rights standards.

In recent years, Kenyan courts have subjected several provisions of the Penal Code to constitutional scrutiny, resulting in the invalidation of some offences on grounds that they unjustifiably limit freedom of expression under Articles 33 and 34 of the Constitution.

4.16.1 Provisions Affecting Freedom of Expression

The Penal Code contains numerous provisions restricting expression, publication, speech, and dissemination of information.

Prohibited Publications

Sections 77 to 81 of the Penal Code empower the Cabinet Secretary responsible for internal security to declare publications prohibited or ban their importation where the Cabinet Secretary considers it:

> *"Necessary in the interests of public order, public health or morals, the security of Kenya, and reasonably justifiable in a democratic society."*

Section 78 establishes the Prohibited Publications Review Board composed of:

- The Attorney-General or representative;
- The Director of Public Prosecutions or representative;
- The Inspector-General of Police or representative;
- The Director of Medical Services or representative;
- Two representatives from religious organizations; and
- Two other persons appointed by the Cabinet Secretary.

Notably, the Board excludes independent constitutional commissions such as the Kenya National Commission on Human Rights and the Commission on Administrative Justice.

Further, the Board reviews decisions only after a prohibition order has taken effect, thereby allowing restrictions on publications before an independent review occurs.

Section 66 of the Penal Code criminalizes publication of:

> *"any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace."*

Although the section provides a defence where an accused person demonstrates reasonable efforts to verify the information before publication, the offence remains broad and susceptible to abuse against journalists, activists, and political critics.

The Security Laws (Amendment) Act, 2014, introduced Section 66A into the Penal Code, which provided that:

> *"A person who publishes, broadcasts or causes to be published or distributed, through print, digital or electronic means, insulting, threatening, or inciting material or images of dead or injured persons which are likely to cause fear and alarm to the general public or disturb public peace commits an offence…"*

Section 66A (2) further criminalized publication of information:

> *"which undermines investigations or security operations by the National Police Service or the Kenya Defence Forces."*

Section 66A (3) expressly stated that:

> *"The freedom of expression and the freedom of the media under Articles 33 and 34 of the Constitution shall be limited as specified under this section…"*

However, in *Coalition for Reforms and Democracy (CORD) & 2 Others v Attorney General*[322], the High Court declared Section 66A unconstitutional for violating Articles 33 and 34 of the Constitution relating to freedom of expression and media freedom.

Sections 194 to 200 of the Penal Code criminalize libel and defamation.

Section 194 defines libel as:

> *"any person who, by print, writing, painting or effigy, or by any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person…"*

322 Coalition for Reforms and Democracy (CORD) & 2 Others v Attorney General [2015] eKLR. Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2015/6984/eng@2015-01-02

Section 195 defines defamatory matter as:

> *"matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule…"*

For many years, criminal defamation provisions were used against journalists, bloggers, civil society actors, and political critics.

However, in *Jacqueline Okuta & Another v Attorney General & 2 Others*[323], the High Court declared Section 194 unconstitutional on grounds that criminal defamation disproportionately limited freedom of expression protected under Article 33 of the Constitution. The Court held that civil remedies for defamation were sufficient and that criminal sanctions created a chilling effect on media freedom and public debate. This was a landmark ruling significantly advancing protection of civic space and media freedom in Kenya.

Section 95(1)(b) criminalizes:

> *"threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned."*

However, in *Law Society of Kenya v Attorney General & Inspector General of Police [2026] eKLR*, the High Court of Kenya, in a judgment by Justice Bahati Mwamuye, declared the provision unconstitutional, null, and void. The court held that Section 95(1)(b) was overly broad, vague, and imprecise, violating constitutional requirements for clarity in criminal law. The provision infringed on freedom of expression and assembly under the Constitution of Kenya (2010).

Similarly, Section 136 criminalizes use of "obscene, abusive or insulting language" to an employer or superior in a manner likely to cause breach of peace.

These provisions are broad and may potentially criminalize legitimate criticism, protest expression, or robust political speech.

Section 138 criminalizes words or conduct intended to wound religious feelings. The section provides:

> *"Any person who, with deliberate intention of wounding the religious feelings of another person, writes any word, utters any word, makes any sound or gesture or places any object in the sight of another person commits an offence."*

Although intended to protect religious harmony, such provisions may potentially conflict with artistic freedom, satire, or legitimate criticism of religion.

Section 61 criminalizes publication intended to:

> *"degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary…"*

This provision reflects colonial-era restrictions designed to protect diplomatic relations and may conflict with modern constitutional standards on political expression.

4.16.2 Extent of Compliance with International Human Rights Law

Several provisions of the Penal Code are inconsistent with international human rights standards governing freedom of expression.

Article 19 of the International Covenant on Civil and Political Rights guarantees the freedom to seek, receive, and impart information and ideas of all kinds.[324] The United Nations Human Rights Committee in General Comment No. 34 emphasized that criminal defamation laws should be approached with caution and that imprisonment is rarely an appropriate penalty for defamation.[325]

Similarly, the African Commission on Human and Peoples' Rights expressed concern regarding Kenya's retention of criminal defamation laws and use of such offences against journalists and media practitioners.[326]

323 Jacqueline Okuta & Another v Attorney General & 2 Others [2017] eKLR. Available at https://www.loc.gov/item/global-legal-monitor/2017-02-14/kenya-high-court-declares-penal-code-provision-on-criminal-defamation-unconstitutional/

324 International Covenant on Civil and Political Rights (ICCPR), 1966

325 United Nations Human Rights Committee. (2011). General Comment No. 34 on Article 19 of the ICCPR.

326 African Commission on Human and Peoples' Rights. (2016). Concluding Observations on Kenya's 8th–11th Periodic Reports.

In its Concluding Observations on Kenya's periodic reports, the Commission recommended that:

> *"Kenya should decriminalize defamation by repealing relevant provisions in the Penal Code."*

Further, the Penal Code's definition of "subversive activities" includes support for unlawful societies, while the Societies Act defines unlawful societies to include unregistered associations. This conflicts with ACHPR Guidelines on Freedom of Association, which recognize that associations need not be registered in order to exist lawfully.

Although some restrictions under the Penal Code pursue legitimate aims such as public order and national security, many provisions remain overly broad, vague, and disproportionate under international human rights standards.

Challenges and Impact on Civic Space

The continued existence of vague and colonial-era offences within the Penal Code remains a major challenge for civic space in Kenya.

Although courts have invalidated provisions such as Section 66A, Section 95(1)(b) and criminal defamation under Section 194, some unconstitutional provisions remain formally unrepealed by Parliament, creating legal uncertainty and opportunities for abuse.

Journalists, bloggers, human rights defenders, political activists, and ordinary citizens continue facing threats of arrest or prosecution under broad public order and false publication offences.

The existence of offences relating to insulting language, false publications, and public alarm may create a chilling effect on: Investigative journalism; Political criticism; Online expression; Human rights advocacy; and Public participation.

Further, broad executive powers to prohibit publications without prior independent review raise concerns regarding censorship and abuse of discretion.

Despite recent progressive constitutional rulings, legislative reform has been slow, and many colonial-era restrictions remain embedded in the Penal Code.

CHAPTER 5

LAWS AFFECTING THE EXERCISE OF THE FREEDOM OF ASSEMBLY

5.1 International and Regional Standards on the Freedom of Assembly (Right of Peaceful Assembly)

The right of peaceful assembly is guaranteed under Article 20 (1) of the Universal Declaration on Human Rights and Article 21 of the International Covenant on Civil and Political Rights (ICCPR). An assembly has been defined as a gathering for a specified purpose and period in a private or public space and includes "demonstrations, inside meetings, strikes, processions, rallies or even sit-ins."[472] The term 'right to protest' is often used interchangeably with the freedom of assembly, referring to the "individual or collective expression of oppositional, dissenting, reactive or responsive views, values or interests."[327] Freedom of peaceful assembly is, by and large, inseparable from the freedom of expression owing to the fact that demonstrations constitute a form of expression. The European Court of Human Rights (ECtHR) has acknowledged this inseparability and interpreted the freedom of assembly as embodied in freedom of expression.

The term 'peaceful protest' denotes protests that are nonviolent, in line with treaty language in the UDHR and the ICCPR on the right of peaceful assembly. The right is thus recognized if organizers of an assembly have a peaceful intention. However, if, despite these peaceful intentions, there are violent outcomes of the protest attributed to third parties, this does not preclude the protection of the right to assemble. Furthermore, peaceful intention to exercise the freedom of assembly should be presumed unless the contrary is demonstrated. It is noteworthy that the term 'peaceful' is excluded from the guarantee to "assemble freely with others" in the African Charter on Human and Peoples' Rights (ACHPR).[328] The Guidelines on Freedom of Assembly and Association in Africa give a broad interpretation of 'peaceful' to include conduct that results in annoyance or impedes the activities of third parties. The occurrence of isolated acts of violence does not render an assembly non-peaceful.[329] Moreover, the imperative for human rights protections subsists regardless of whether or not a protest is characterized as peaceful.

Restrictions to the exercise of the right to peaceful assembly in the ICCPR are limited to: "those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."[330] This mirrors the restrictions provided in the ACHPR.[331] The enactment of laws on freedom of assembly should aim to facilitate the enjoyment of the right.[332] Limiting the right to peaceful assembly is only justifiable if it passes a three-pronged test: it should be in conformity with the law, in pursuance of a legitimate aim, and necessary in a democratic society. The limitation must be subject to a "strict test of necessity and proportionality."

327 Article 19- Right to Protest in Kenya https://www.article19.org/wp- content/uploads/2019/11/Kenya-Free-to-Protest-Article-19.pdf
328 Article 11 ACHPR
329 The Guidelines on FOAA in Africa, 70 (a) and (b)
330 Article 21 ICCPR
331 Article 11 ACHPR
332 The Guidelines on FOAA in Africa, 66

Necessity requires compelling reasons to outweigh the enjoyment of the freedom of assembly, while proportionality means the interference should not exceed the pursuit of a legitimate aim, and as such, states should choose the least intrusive measures.[333]

The three-pronged test also applies to sanctions for offences committed during protests; sanctions are a form of limitation on the freedom of assembly and must therefore be justifiable. Given the nature of exercising the freedom of assembly in public spaces, disruption to others should be expected. A degree of tolerance from the public and authorities is therefore necessary, and dispersal of protests by the latter should be subject to restraint. The freedom of assembly should not be limited on the grounds that protestors' obstruction of third parties' activities will lead to economic consequences.[334] With respect to the imposition of sanctions and liability, the Guidelines for Policing of Assemblies in Africa recommend that organizers or participants of assemblies should not be subjected to sanctions based on acts committed by others. Liability should therefore be personal and assembly organizers should not bear disproportionate responsibilities or liabilities; this includes the public cost of assemblies, such as cleanup costs.

Dispersal of assemblies should be a last resort, and this resort should meet the legality, necessity, proportionality and non-discrimination test. If dispersal is unavoidable, law enforcement officials should announce the imminent dispersal and give participants in the assembly an opportunity to disperse voluntarily. Furthermore, intentional use of lethal force and the use of firearms to disperse an assembly should be prohibited.[335] In accordance with the UN Basic Principles on the use of force, even in the case of violent protesters, the use of firearms should be strictly restricted to the necessity to protect life.

The right to choose the venue or location of an assembly is central to exercising the freedom of peaceful assembly, and the location is often strategically chosen in tandem with the protest messaging. Limiting the right to this choice by predetermining locations is therefore not permissible. Whereas the right to choose a venue is not absolute, any limitation to this right should be prescribed in law and subject to the three-pronged test.[336] Additionally, where such a limitation is imposed, state authorities should "facilitate the ability of an assembly to take place within sight and sound of its target audience."[337]

The permissibility of domestic authorities requiring advance notification of an assembly is accepted in international law, but this need not be an obligation. The rationale of the permissibility is "to allow State authorities to facilitate and safeguard the exercise of the right to freedom of peaceful assembly, to protect public safety and order and the rights and freedoms of others, and to meet their obligation to reroute traffic and deploy security when necessary." The notification procedure should not be bureaucratic, and the authorities should promptly confirm receipt of the notice.[338] Prohibition is only justifiable as a last resort if there is no other "less intrusive response" in pursuit of a legitimate aim. A decision on prohibition should be communicated promptly and include the legal rationale for the decision.[339] There is consensus in international legal discourse that spontaneous assemblies that arise in rapid response to an unforeseen development should not be subject to prescribed notification procedures.

The Constitution of Kenya guarantees the freedom of assembly in accordance with international and regional human rights standards. Article 37 provides that every person has the right, peaceably and unarmed, to assemble, demonstrate, picket, and present petitions to public authorities. Any restriction to the freedom of assembly must be subject to the limitation of rights provided in Article 24 (1) of the Constitution as follows:

> *A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, considering all relevant factors, including*
>
> *a) the nature of the right or fundamental freedom;*
> *b) the importance of the purpose of the limitation;*
> *c) the nature and extent of the limitation;*
> *d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and*

333 FOOA online http://freeassembly.net/foaa-online/ 17
334 The Guidelines on FOAA in Africa, 87
335 The ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, https://www.achpr.org/legalinstruments/detail?id=65, 22-23
336 FOOA online! 32-36
337 The Guidelines on FOAA in Africa, 90 (b)
338 FOOA online! 56-59
339 The Guidelines on FOAA in Africa, 92

e) *the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.*

Article 24 (2) further qualifies the scope of limitation in Article 24 (1) by stipulating that a provision in a legislation limiting a right or fundamental freedom must be clear and specific on the nature and extent of the limitation and should not derogate from the core or essential content of the fundamental freedom.

5.2 The Public Order Act

The Public Order Act makes provision for the maintenance of public order and for connected purposes.

5.2.1 Provisions Affecting Freedom of Assembly

The Act regulates public gatherings, defined in **section 2** of the Act as "a public meeting, a public procession, and any other meeting, gathering or concourse of ten or more persons in any public place."

Public meetings or processions must be held in accordance with the provisions of Section 5 of the Act. Section 5 (2) provides for notification of public gatherings; notice of a public meeting or a public procession should be provided to the regulating officer "at least three days but not more than fourteen days before the proposed date of the public meeting or procession."

Under Section 5 (3), the notice is required to be submitted in a prescribed form and specify the following:

a) *Full names and physical address of the organizer of the proposed public meeting or public procession;*
b) *Proposed date of the meeting or procession and the time thereof which shall be between six o'clock in the morning and six o'clock in the afternoon;*
c) *Proposed site of the public meeting or the proposed route in the case of a public procession.*

The regulating officer is mandated to keep a public register of all notices received under subsection (2), and any person can inspect this register during working hours.[497]

Under Section 5 (4), following receipt of a notice for a public gathering, the regulating officer is authorized to notify the organizer that it is not possible to hold the meeting should there be another proposed meeting or procession on the same date, time and at the same venue as proposed in the notice. The notification by the regulating officer should be in writing and delivered to the organizer at the address provided pursuant to Section 5 (3).

Upon receipt of the notification by the regulating officer, Section 5 (6) prohibits the organizer from holding the public gathering but permits the organizer to do so on a future date as the organizer may elect to notify.

Section 5 (7) requires that the organizer of every public meeting or procession or their authorized agent be present during the meeting or procession and "shall assist the police in the maintenance of peace and order at the meeting or procession." Refusal or neglect by any person to comply with the orders under this subsection amounts to an offence.

Section 5 (8) authorizes the regulating officer or any police above the rank of inspector to stop or prevent the holding of a public meeting or procession in the following scenarios:

a) *If the meeting or procession is not held in compliance with the preceding requirements under sub sections (2) or (6).*
b) *If there is "clear, present or imminent danger of a breach of the peace or public order" during a public meeting or procession.*

The order for dispersal of a meeting or procession under this sub section is required to be effected by "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."

Kenyan courts have repeatedly affirmed that peaceful assembly constitutes a constitutional right rather than a privilege subject to arbitrary police discretion. In *Republic v Inspector General of Police ex parte Kenya Human Rights Commission* [2024] eKLR, the High Court reiterated that notification under the Public Order Act does not constitute a request for permission and that authorities bear a constitutional obligation to facilitate, rather than suppress, peaceful assemblies.

Nevertheless, enforcement patterns during the review period demonstrated persistent tensions between constitutional protections and securitized policing practices.

Section 5 (10) provides that if any public meeting or public procession is held following notification by a regulating officer pursuant to the provisions under Section 5(3), such a meeting shall be deemed to be an unlawful assembly. Under Section 5 (11) "Any person who takes part in any public meeting or public procession deemed to be an unlawful assembly or holds, convenes or organizes or is concerned in the holding, convening or organizing of any such meeting or procession shall be guilty of the offence of taking part in an unlawful assembly under Chapter IX of the Penal Code and liable to imprisonment for one year."

Part IV of the Act regulates curfew orders. Section 8 (1) provides as follows:

> *The Cabinet Secretary, on the advice of the Inspector-General of the National Police Service may, if he considers it necessary in the interests of public order so to do, by order (hereinafter referred to as a curfew order) direct that, within such area and during such hours as may be specified in the curfew order, every person, or, as the case may be, every member of any class of persons specified in the curfew order, shall, except under and in accordance with the terms and conditions of a written permit granted by an authority or person specified in the curfew order, remain indoors in the premises at which he normally resides, or at such other premises as may be authorized by or under the curfew order.*

Section 8 (3) requires the publication of a curfew order in a manner sufficient to bring to the notice of all persons affected by the order. The curfew shall remain in force for the period specified in the order or may be rescinded earlier by the same authority that issued the order or by the Minister (defined under the Act as "the Minister responsible for administration"). The section further provides a caveat that "no curfew order which imposes a curfew operating during more than ten consecutive hours of daylight shall remain in force for more than three days, and no curfew order which imposes a curfew operating during any lesser number of consecutive hours of daylight shall remain in force for more than seven days."

Rescission of a curfew order is required under Section 8(4) to be published in a similar manner to the publication of a curfew order as provided in Section 8 (3). Contravention of a curfew order is an offence, and anyone found guilty is "liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment" as provided under Section 8 (6).

The Act distinguishes a "curfew order" from a "curfew restriction order". The latter can be issued by a police officer in charge of the police in a county or by a police officer in charge of a police division, if the officer considers it necessary in the interests of public order within their area of responsibility, in accordance with Section 9 (1). The order shall specify the hours during which "all persons, or, as the case may be, all members of any class of persons specified in the curfew restriction order" are prohibited from entering, being or remaining in any specified premises. Any exceptions to the curfew order will be in accordance with the terms and conditions of a written permit granted by an authority or person specified in the curfew restriction order. The curfew restriction order shall not, however, prohibit or prevent any person from entering, being or remaining in their residential, business or workplace premises.

Under Section 9(3), publication of a curfew restriction must be sufficient to notify all persons affected by the order. The order shall remain in force for a period not exceeding twenty-eight days. The issuing authority or the Commissioner of Police may rescind the curfew restriction order, and any variation of an order shall be publicized in a similar manner to the requirements on publication of the order.

Contravention of any of the provisions of a curfew restriction order or any of the terms or conditions of a permit shall amount to an offence with a penalty of a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding three months, or to both; such fine and such imprisonment as provided under Section 9(6).

Section 14 (1) restricts the use of force and provides as follows:

> *Whenever in this Act it is provided that force may be used for any purpose, the degree of force which may be so used shall not be greater than is reasonably necessary for that purpose; whenever the circumstances so permit without gravely jeopardizing the safety of persons and without grave risk of uncontrollable disorder, firearms shall not be used unless weapons less likely to cause death have previously been used without achieving the purpose aforesaid; and firearms and other weapons likely to cause death or serious bodily injury shall, if used, be used with all due caution and deliberation, and without recklessness or negligence.*

The provision above does not preclude the lawful right of any person to use force in the defense of person or property as provided under subsection 2**.**

Section 15 provides for the modalities of service; any order, notice, or document under the Act must be effected personally or by registered post. Where the recipient is an entity such as a corporate body or a society, service shall be deemed to have been effected once served personally to a secretary, director or other officer of the entity acting in the management. Alternatively, the order, notice, or document can be sent to the entity's registered office. If the entity does not have a registered office, service may be effected by registered post.

Section 17 provides that "every person who is guilty of an offence under this Act, or under any regulations made thereunder, in respect of which no special penalty is provided shall be liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment." Under Section 18, if a company, society, association or body of persons commits the offence, the persons responsible for management of the affairs and activities of such an entity will be deemed liable unless they demonstrate that they were not aware of the commission of an offence or took reasonable steps to prevent commission of the offence.

It is noteworthy that the Cabinet Secretary is authorized under Section 22 to make regulations on anything prescribed under the Act or generally to give effect to the provisions of the Act.

5.2.2 Extent of compliance with International Human Rights Law Notification procedures

Notification procedures should meet the proportionality test and consequently should not be overly burdensome or bureaucratic. The requirement under Section 5 (2) that notification of public meetings should be given at least three days and no more than two weeks prior to the meeting fails to specify the period within which a response to the notification will be given. Furthermore, the provision under Section 5 (4) mandating the regulating authority to notify the organizer of the assembly that it is not possible to hold the assembly due to a planned meeting on the same date and venue, fails to specify the period within which this should be communicated.

Section 5 (8) outlaws an assembly held pursuant to section 5(4). These provisions seemingly lean towards restriction of the right to assembly rather than the international requirement for domestic laws to facilitate enjoyment of the freedom. Failure to provide for official acknowledgement of notification of assemblies under the law creates uncertainty for organizers as to whether proceeding with the assembly may result in criminal sanctions. A prompt acknowledgement of receipt of notification of an assembly should be made, and clear reasons communicated for any restrictions imposed thereto. The absence of a prompt response from state authorities should be construed as indicating that the notified assembly is permissible. The Guidelines for Freedom of Assembly in Africa recommend that, where authorities receive notifications of multiple assemblies at the same location and time, efforts should be made to facilitate them. If this is not possible, a reasonable means should be found to allocate the space for the assemblies. The contrary allows notification procedures to shift the burden to assembly organizers to challenge a refusal rather than placing the onus on state authorities to justify the restrictions. This is inconsistent with the rationale for notification procedures, meant to enable state authorities to protect public safety rather than impede the exercise of the right to assembly.

Section 5 (3) specifies the duration for a public meeting with respect to notification of a meeting to be "between six o'clock in the morning and six o'clock in the afternoon." This implicitly excludes all assemblies held after 6:00 pm, which calls into question the legality of holding night vigils as a form of assembly. The holding of night assemblies should be assessed on a case-by-case basis rather than adopting a blanket ban.

The outlawing of assemblies for which no notification has been given effectively quashes spontaneous assemblies. This is not in line with international and regional human rights standards, which recognize the necessity of exempting spontaneous assemblies from notification procedures. Restrictions on spontaneous assemblies are only justifiable to the extent that there is a risk of harm that impedes the pursuit of a legitimate aim, such as the protection of public order- this risk should, however, be "serious and imminent."

The provision requiring the organizer of an assembly to assist the police in the maintenance of peace and order is overly broad. This further confounds the liability placed on the organizer given that refusal to comply with an order to assist the police amounts to an offence.[340] Whereas the need for cooperation between organizers of assemblies and law enforcement officials is recognized, the primary duty of maintaining public order is a state obligation and should not be shifted to the organizers. Furthermore, liability must be personal – if organizers are subject to sanctions based on the actions of other parties, this places an unfair burden on organizers and serves to curtail the freedom of assembly.

Challenges and impact on civic space

Contravention of legal restrictions on the use of excessive force by the police in response to protests remains a prevalent challenge in Kenya. Police violence documented during protests in the lead up to the 2017 elections included several killings and multiple injuries resulting from the use of firearms to obstruct peaceful protests. Despite the fact that many assemblies are conducted peacefully, violent responses by police are "heavily guided by the culture, organizational structure and leadership of the police, as well as public perception of officers' actions". A 2018 survey on public perception of protests found that despite respondents being relatively well informed about their rights during protests, many did not participate in protests due to fear of violence from law enforcement officials, protesters or third parties. The use of tear gas by police to disperse peaceful protestors for instance is a common occurrence during protests.[341]

5.3 Protected Areas Act

The purpose of this legislation is to prevent the entry of unauthorized persons into areas which have been declared to be protected areas. This is a pre-independence legislation that became law in 1949. Although the list of protected areas has expanded through subsidiary legislation, the last substantive amendment to the Protected Areas Act was enacted in 1964.

5.3.1 Provisions Affecting Freedom of Peaceful Assembly

The most significant provision affecting freedom of assembly is Section 3(1), which authorizes the Cabinet Secretary to declare any area, place, or premises a protected area whenever it appears "necessary or expedient in the interests of public safety and public order." Once such a declaration is made, entry into or presence within the area is prohibited except with permission from the prescribed authority.

The breadth of the terms "necessary or expedient", "public safety", and "public order" grants the Executive extensive discretion in determining which locations may be designated as protected areas. In practice, such designations may affect citizens' ability to hold demonstrations, public meetings, vigils, marches, or picketing near government offices or public institutions, which are often the focus of civic action and public accountability campaigns.

Sections 4, 5, and 6 authorize security officers to regulate access to protected areas, challenge persons entering such areas, conduct searches, and remove unauthorized persons. These powers may directly affect assemblies occurring near protected areas, particularly where participants are perceived to be approaching or entering restricted premises.

Of particular concern is Section 9, which creates criminal offences for unauthorized entry into protected areas or failure to comply with directions issued under the Act. Individuals who breach the Act may be subjected to criminal prosecution, fines, or imprisonment. The existence of criminal sanctions may deter individuals from participating in assemblies or demonstrations near government facilities, even where the assembly itself is peaceful and constitutionally protected.

340 Section 5 (7) & 5 (9)

341 Right to Protest in Kenya, Article 19 https://www.article19.org/wp- content/uploads/2019/11/Kenya-Free-to-Protest-Article-19.pdf, 17

5.3.2 Extent of Compliance with International Human Rights Law

The objective of protecting sensitive installations and national security infrastructure is recognized as a legitimate basis for limiting access to certain locations. Consequently, the existence of a legal framework regulating entry into protected areas is not inherently inconsistent with international human rights law.

However, concerns arise regarding the breadth of discretion granted under Section 3(1) and the criminal sanctions imposed under Section 9. The African Commission on Human and Peoples' Rights Guidelines on Freedom of Association and Assembly in Africa (2017) emphasize that restrictions on assemblies must be narrowly tailored, proportionate, and the least restrictive means available. The Guidelines further provide that restrictions should not be imposed merely because assemblies occur near public institutions or government buildings unless there is a demonstrable and specific security risk.

Similarly, the United Nations Human Rights Committee, in General Comment No. 37 on Article 21 of the ICCPR, has emphasized that public spaces around government buildings are often important locations for democratic expression and peaceful assembly. States should therefore avoid blanket restrictions that effectively prevent assemblies from being seen or heard by their intended audience.[342]

The criminal penalties established under Section 9 also raise concerns under international standards. The African Commission Guidelines discourage the use of criminal sanctions for conduct related to the exercise of assembly rights when administrative or civil measures would suffice. Criminalization may have a chilling effect on participation in peaceful assemblies and public demonstrations.

Challenges and Impact on Civic Space

The Act poses several challenges for civil society organizations, social movements, and community groups engaged in public advocacy and accountability work. Many demonstrations and public campaigns are intentionally directed at government institutions because such institutions are responsible for policy decisions and public administration. Where government premises or surrounding areas are designated as protected areas, the effectiveness of assemblies may be significantly diminished.

The broad powers granted to security agencies may also create uncertainty regarding where assemblies may lawfully occur. Organizers may avoid holding demonstrations near government institutions for fear of arrest, dispersal, or prosecution, thereby limiting opportunities for citizens to communicate grievances directly to public authorities.

The criminal sanctions contained in Section 9 are particularly problematic from a civic-space perspective. The threat of arrest or prosecution may discourage participation in peaceful protests and public accountability initiatives, especially among grassroots activists, human rights defenders, and community organizations.

Furthermore, the Act predates the Constitution of Kenya, 2010 and does not adequately reflect contemporary constitutional standards relating to public participation, proportionality, fair administrative action, and protection of fundamental freedoms. The absence of clear safeguards governing the designation and review of protected areas increases the risk of restrictions that unnecessarily interfere with peaceful assemblies.

5.4 Preservation of Public Security Act

5.4.1 Provisions Affecting Freedom of Assembly

This legislation states that it shall be lawful for the President to make regulations that make provision for "the control or prohibition of any procession, assembly, meeting, association or society." Evidently, this is a very broad provision limiting the right to freedom of assembly, leaving room for blanket bans.

5.4.2 Compliance with International Human Rights Law

The ICCPR permits States Parties to restrict the right to peaceful assembly in the interests of national security, as reflected in the Preservation of Public Security Act. However, the limitation on freedom of assembly is overly broad and leaves room for blanket bans.

342 United Nations Human Rights Committee. (2020). General Comment No. 37 on the Right of Peaceful Assembly (Article 21 ICCPR).

Consequently, it is not compliant with the ACHPR Guidelines on Freedom of Association and Assembly in Africa, which provide as follows:

> *"The blanket application of restrictions, including the banning of assemblies at certain times of day or in particular locations, shall be permitted only as a measure of last resort, where the ban in question complies with the principle of proportionality. The holding of assemblies in public areas in the proximity of residential areas, as well as the holding of nighttime assemblies, shall be handled on a case-by-case basis, rather than prohibited as such."*
>
> *"Any limitations imposed shall be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society, as these principles are understood in the light of regional and international human rights law. The law shall not allow assemblies to be limited based on overly broad or vague grounds."*

Challenges and impact on civic space

The President's overly broad discretionary powers to limit the right to peaceful assembly hang like the proverbial sword of Damocles over Kenyan civic space. At the whims of a disapproving President, the enjoyment of this fundamental freedom can be snuffed out at any moment.

5.5 The Universities (Amendment) Act, 2016.

The main purpose of this act is to make better provisions for the advancement of university education in Kenya. The provisions of this act mainly apply to the Commission for Higher Education, public and private Universities.

5.5.1 Provision Affecting Freedom of Association

Section 18 (1C) of the Universities (Amendment) Act 2016[343] is to the effect that the election of the members of the student council referred to in subsection (1A), the students' association shall constitute itself into electoral colleges based on either academic departments, schools or faculties, as may be appropriate. Section 18 (1D) states that the students at each Electoral College constituted under subsection (1C) shall elect three representatives

a) *from amongst persons who are not candidates under subsection (1A); and*
b) *of whom not more than two-thirds shall be of the same gender.*

Section 18 (1E) is to the effect that the representatives of each electoral college shall elect the members of the student council within thirty days of the election under subsection (1D). Section 18 (F) is to the effect that the student council hold office for a term of one year and may be eligible for re-election for one final term.

5.5.2 Extent of Compliance with International Human Rights Law

The provisions under section 18 of the Universities (Amendment) Act 2016 limit fundamental rights and freedoms under international law and, as such, are largely non-compliant with international human rights law.

Challenges and Impact on Civic Space

The provisions enshrined in section 18 of this act pose a significant challenge to civic space because they contravene Article 36(2) of the Constitution of Kenya. This is premised on the fact that the provisions under section 18 (1C) restrict freedom of expression by compelling students to constitute themselves into electoral colleges based on either academic departments, schools or faculties. Student leaders from various Universities in Kenya view this provision as a deliberate attempt by the Government, through legislation, to compel them to join associations, which is a clear violation of the provisions under Article 36(2) of the Constitution of Kenya. Additionally, these provisions pose a serious threat to the realization of democratic rights as they essentially scrapped the popular vote system and now introduce an electoral college that has been viewed as retrogressive and will negatively impact future political processes in Universities.

343 http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2016/No._48_of_2016.pdf

5.6 Public Health Act (Cap. 242)

The Public Health Act is best understood as a law that serves a legitimate public health objective but contains broad emergency powers that can significantly restrict civic space, particularly the freedom of peaceful assembly protected under Article 37 of the Constitution.

The Act was enacted before the Constitution of 2010 and therefore contains few explicit safeguards regarding public participation, civic freedoms, proportionality, or oversight. These issues became particularly visible during the COVID-19 pandemic and are again emerging in the context of Kenya's current Ebola preparedness measures.

Beyond the COVID-19 regulations, the broader application of the Public Health Act permits health authorities to impose quarantines, movement restrictions, closure of premises, and emergency public health measures that may indirectly affect the exercise of the right to assemble. During the pandemic, the government imposed curfews, lockdowns, inter-county travel restrictions, and bans on public gatherings under the Act.

5.6.1 Provisions Affecting Freedom of Assembly

Section 36 provides that where any part of Kenya appears threatened by any formidable epidemic, endemic, or infectious disease, the Cabinet Secretary responsible for health may make rules for the prevention, control, or suppression of the disease. Particularly relevant are:

> *Section 36(d), which authorizes restrictions on movement into and out of affected areas and requires medical examination, observation, quarantine, vaccination, or other disease-control measures.*
>
> *Section 36(e), which permits the establishment of observation camps and isolation facilities.*
>
> *Section 36(m), a broad residual clause authorizing regulations for "any other purpose" necessary for disease prevention and control.*

Although Section 36 does not expressly mention assemblies, its broad regulation-making authority has historically been used to issue subsidiary legislation restricting gatherings.

The most notable example was the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020, made under Section 36. Rule 7(1) prohibited all public gatherings during the restriction period, including political meetings, demonstrations, religious gatherings, sporting events, and public assemblies. The effect was a near-total suspension of Article 37 of the Constitution 2010.

Section 37 empowers authorities to enforce rules made under Section 36 and provides penalties for non-compliance. During health emergencies, this provision transforms public health directives into legally enforceable obligations and enables enforcement through police action, administrative sanctions, or criminal prosecution.

Consequently, restrictions on assemblies may become enforceable through arrests, dispersal of gatherings, fines, or prosecutions.

In *Law Society of Kenya v Cabinet Secretary for Health & Others (2020)*, litigation arising from COVID-19 quarantine measures, the High Court affirmed that public health measures remain subject to constitutional scrutiny. The Court emphasized that emergency responses must comply with constitutional principles of dignity, proportionality, and reasonableness. The decision reinforced the principle that public health emergencies do not suspend constitutional rights.

In *Katiba Institute v Attorney General & Others (HCCHRPET/E333/2026),* the ongoing litigation concerning the proposed Ebola observation facility in Laikipia, the applicants argue that the government proceeded with significant public health arrangements without adequate public participation and disclosure of relevant agreements. The case is significant because it tests whether public health preparedness can justify bypassing constitutional requirements for transparency and public participation. It also illustrates the judicialization of civic space, in which courts increasingly serve as the primary forum for resolving disputes concerning emergency powers and civic freedoms. Although the matter remains pending, the Court issued conservatory orders and directed greater disclosure regarding the arrangements.[344]

344 https://katibainstitute.org/wp-content/uploads/2026/05/mpdf-14.pdf

5.6.2 Alignment with International Human Rights Standards

Sections 36 and 37 of the Public Health Act are broadly aligned with international human rights law insofar as they pursue the legitimate objective of protecting public health and preventing the spread of infectious diseases. International human rights instruments recognize that certain rights, including the right to peaceful assembly, may be restricted during public health emergencies where such restrictions are necessary to protect the health and safety of the population.

Article 21 of the International Covenant on Civil and Political Rights guarantees the right of peaceful assembly but permits limitations when prescribed by law and necessary in a democratic society in the interests of public health, public safety, or public order. Similarly, Articles 10 and 11 of the African Charter on Human and Peoples' Rights recognize the rights to association and assembly while allowing restrictions that are lawful, necessary, and proportionate for the protection of public health and the rights of others.

The key question under international law is not whether restrictions may be imposed during a health emergency, but whether such restrictions satisfy the principles of legality, necessity, proportionality, non-discrimination, and time limitation. These principles are further elaborated in the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR, which require that public health measures be based on scientific evidence, pursue a legitimate objective, constitute the least restrictive means available, and remain subject to review and oversight.

While Sections 36 and 37 provide a legal basis for disease-control measures, concerns arise because the powers granted to the Cabinet Secretary are exceptionally broad and lack explicit statutory safeguards requiring proportionality assessments, periodic review, parliamentary oversight, or public participation. During the COVID-19 pandemic, the blanket prohibition of public gatherings under subsidiary legislation issued pursuant to Section 36 raised questions about whether less restrictive alternatives could have achieved the same public health objectives. Similar concerns may arise in the context of future responses to Ebola, Mpox, or other infectious diseases if restrictions on assembly are imposed without adequate justification, transparency, or consultation.

From an international human rights perspective, therefore, Sections 36 and 37 are compatible with the objective of protecting public health, but their implementation must be carefully scrutinized to ensure that emergency powers do not result in unnecessary or disproportionate restrictions on civic freedoms. The ongoing litigation by Katiba Institute and the Law Society of Kenya concerning the proposed Ebola observation facility reflects the growing importance of transparency, accountability, and public participation in the governance of public health emergencies.

Challenges in Implementation

- Section 36 grants the Cabinet Secretary wide-ranging powers to make rules for the prevention and control of infectious diseases. The breadth of this authority creates the risk of expansive interpretations that may unnecessarily restrict constitutional freedoms, including freedom of assembly.
- The Public Health Act predates the Constitution of Kenya, 2010 and does not expressly incorporate constitutional principles such as public participation, proportionality, accountability, and protection of fundamental freedoms when emergency powers are exercised.
- Experience from the COVID-19 pandemic demonstrated how public health measures can be enforced through policing, surveillance, and criminal sanctions, resulting in the treatment of civic activities such as protests and public gatherings as security threats rather than constitutional rights.
- The broad powers available under Sections 36 and 37 could be used to justify restrictions on demonstrations, political gatherings, labour actions, or civic mobilization during periods of political tension under the guise of responding to public health risks.
- Emergency regulations can be adopted and implemented rapidly with limited legislative scrutiny, creating accountability gaps and reducing opportunities for democratic oversight.
- Public health measures are often adopted on an urgent basis, but prolonged restrictions affecting constitutional rights may continue without meaningful consultation with affected communities, civil society organizations, or other stakeholders.
- The Act does not establish objective thresholds or procedural safeguards to guide decisions on when and how assemblies may be restricted during health emergencies, leaving substantial discretion to executive authorities.

- During COVID-19, enforcement of movement restrictions and gathering bans was at times accompanied by allegations of excessive force, arbitrary arrests, and selective application of the law. Similar concerns may arise in future health emergencies if safeguards are not strengthened.
- Public confidence in emergency measures may be undermined where decisions are not accompanied by the publication of scientific evidence, risk assessments, or clear explanations of why restrictions are necessary. The ongoing Ebola preparedness dispute illustrates how inadequate disclosure can generate legal challenges and public distrust.
- As public health measures increasingly become the subject of constitutional litigation, courts are often called upon to balance public health objectives against civic freedoms. While judicial oversight is important, reliance on litigation as the primary accountability mechanism may delay the timely resolution of disputes affecting fundamental rights.

CHAPTER 6

FREEDOM AND SECURITY OF THE PERSON

6.1 International, Regional and Constitutional Standards on the Freedom and Security of the Person

Freedom and security of the person are fundamental human right that protects individuals against arbitrary interference with their liberty, physical integrity, dignity, and personal autonomy. The right encompasses protection from arbitrary arrest and detention, torture, cruel, inhuman or degrading treatment or punishment, enforced disappearances, extrajudicial killings, human trafficking, slavery, violence, and other forms of coercion. It is a foundational right because the enjoyment of other civic freedoms - including freedom of expression, association, assembly, and political participation - depends on individuals being able to exercise those rights without fear of violence, intimidation, unlawful detention, or other threats to their personal security. International, regional, and national human rights frameworks recognize that states have both a negative obligation to refrain from violating personal liberty and security and a positive obligation to protect individuals from abuses by both state and non-state actors.

The foundation of international protection for freedom and security of the person is found in the Universal Declaration of Human Rights (UDHR), 1948. Article 3 provides that everyone has the right to life, liberty, and security of person, while Article 5 prohibits torture and cruel, inhuman, or degrading treatment or punishment. Article 9 further protects individuals from arbitrary arrest, detention, or exile. Together, these provisions establish the principle that personal liberty and security are indispensable components of human dignity and democratic governance.

The International Covenant on Civil and Political Rights (ICCPR), to which Kenya is a State Party, contains comprehensive protections relating to freedom and security of the person. Article 6 protects the right to life and requires states to take measures to prevent arbitrary deprivation of life. Article 7 prohibits torture and cruel, inhuman, or degrading treatment or punishment under all circumstances. Article 9 guarantees the right to liberty and security of the person and protects individuals from arbitrary arrest and detention. It further requires that arrested persons be informed of the reasons for their arrest, be brought promptly before a judicial authority, and have access to legal remedies to challenge the legality of their detention. The United Nations Human Rights Committee has clarified that the right to security of the person extends beyond physical detention and includes protection against threats, violence, enforced disappearances, intimidation, and other actions that undermine personal security.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) establishes the absolute prohibition of torture under international law. Article 2 provides that no exceptional circumstances, including war, public emergencies, terrorism, or political instability, may be invoked to justify torture. The Convention obligates states to criminalize torture, investigate allegations, prosecute perpetrators, provide remedies to victims, and prevent torture within their jurisdictions. UNCAT also establishes the principle of non-refoulement under Article 3, prohibiting the transfer of individuals to countries where they face a substantial risk of torture.

The International Convention for the Protection of All Persons from Enforced Disappearance recognizes enforced disappearance as a grave violation of human rights. The Convention requires states to criminalize enforced disappearance, investigate allegations, prosecute perpetrators, protect victims and witnesses, and establish mechanisms for locating disappeared persons. It further recognizes the rights of families to know the truth concerning the fate and whereabouts of disappeared relatives.

The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide guidance on the use of force by security agencies. The Principles require that force be used only when necessary, proportionate, lawful, and accountable. Lethal force may be used only as a last resort, strictly unavoidable, to protect life. These standards are particularly relevant in the management of public assemblies, protests, arrests, and detention.

The African Charter on Human and Peoples' Rights provides the principal regional framework for protecting freedom and security of the person. Article 4 guarantees the right to life and the integrity of the person. Article 5 prohibits torture, cruel, inhuman, or degrading punishment and treatment and protects human dignity. Article 6 protects personal liberty and security and prohibits arbitrary arrest and detention. The African Commission on Human and Peoples' Rights has consistently interpreted these provisions to require states to prevent torture, investigate unlawful killings, prohibit enforced disappearances, and ensure accountability for security sector abuses.

The Robben Island Guidelines on the Prohibition and Prevention of Torture in Africa, adopted by the African Commission in 2002, provide practical measures for preventing torture and ill-treatment. The Guidelines call upon states to criminalize torture, establish independent oversight mechanisms, investigate allegations promptly, protect victims and witnesses, and provide reparations for survivors. The Guidelines have become an important benchmark for assessing compliance with regional standards on personal security and protection from abuse.

The African Commission has also emphasized that counterterrorism measures must respect human rights and the rule of law. These principles require states to ensure that anti-terrorism laws and security operations do not result in arbitrary detention, torture, enforced disappearances, or unlawful killings.

The Guidelines for the Policing of Assemblies recognize that the right to freedom of assembly is closely linked to personal security. They require law enforcement agencies to facilitate peaceful assemblies, minimize the use of force, protect participants from violence, and ensure accountability for violations committed during crowd-control operations.

6.2 Prevention of Torture Act, 2017

The Prevention of Torture Act, 2017 was enacted to operationalize Articles 25(a) and 29(d) of the Constitution, which prohibit torture and guarantee freedom and security of the person. The Act gives domestic effect to Kenya's obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). The legislation represents a significant milestone in Kenya's efforts to address the legacy of torture and ill-treatment by establishing torture as a specific criminal offence and creating mechanisms for accountability.

6.2.1 Key Provisions Affecting Freedom and Security of the Person

Several provisions directly protect the right to freedom and security of the person, as shown below.

Section 4 adopts a broad definition of torture, encompassing both physical and psychological suffering intentionally inflicted by, at the instigation of, or with the acquiescence of a public official.

Section 5 criminalizes torture and imposes penalties of up to twenty-five years imprisonment, with life imprisonment where torture results in death.

Section 6 establishes the absolute prohibition of torture by providing that no exceptional circumstances, including war, political instability, public emergency, or superior orders, may be invoked to justify torture.

Section 9 provides that any confession, admission, or information obtained through torture is inadmissible in judicial proceedings, thereby protecting due process rights and safeguarding individuals against coercive interrogation practices.

Section 10 prohibits immunity or amnesty for perpetrators of torture and reinforces individual accountability.

Section 21 prohibits the extradition, deportation, or return of any person to a country where there are substantial grounds for believing that the individual would face a real risk of torture.

Collectively, these provisions strengthen protection against arbitrary state violence, unlawful detention, coercive interrogation, and other violations of personal security.

In *Gitobu Imanyara & 2 Others v Attorney General* (2016)[345], the Court of Appeal affirmed findings that the petitioners had been unlawfully detained and tortured during the one-party era. The Court upheld substantial compensation awards and reiterated that victims of torture are entitled to effective remedies, including monetary compensation and judicial redress.

More recently, Constitutional Petition No. E275 of 2024, filed by torture survivors, the Kenya Human Rights Commission and the Law Society of Kenya, seeks the declassification of the Nyayo House torture chambers and their conversion into a national memorial and monument. The petition reflects continuing efforts to secure truth, accountability, and historical recognition for victims of torture.

6.2.2 Alignment with International Human Rights Standards

The Prevention of Torture Act, 2017, is largely aligned with international and regional human rights standards governing the prohibition of torture and the protection of personal security. The Act gives domestic effect to Kenya's obligations under the United Nations Convention against Torture (UNCAT) by criminalizing torture, prohibiting its use under all circumstances, and providing mechanisms for accountability and redress. Its provisions reflect the absolute prohibition of torture recognized under international law, which permits no derogation even during periods of war, public emergency, political instability, or national security threats.

The Act is also consistent with Articles 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR), which prohibit torture, cruel, inhuman or degrading treatment or punishment, and protect individuals from arbitrary arrest and detention. At the regional level, the legislation accords with Articles 4, 5 and 6 of the African Charter on Human and Peoples' Rights, which guarantee the right to life, human dignity, personal liberty, and security of the person.

Further, the Act reflects the principles contained in the Robben Island Guidelines on the Prohibition and Prevention of Torture in Africa by emphasizing prevention, accountability, victim protection, and effective remedies. Importantly, Section 21 incorporates the international principle of non-refoulement by prohibiting the extradition, deportation, or return of any person to a country where they face a real risk of torture, thereby giving effect to Article 3 of UNCAT. Through these provisions, the Act demonstrates Kenya's commitment to upholding international standards aimed at preventing torture and safeguarding the freedom and security of the person.

Challenges in Implementation

Despite the progressive nature of the Prevention of Torture Act, significant implementation challenges continue to undermine its effectiveness. Allegations of torture, cruel, inhuman and degrading treatment remain prevalent, particularly during arrest, detention, interrogation, and the management of public protests. Although the Act criminalizes torture, relatively few cases result in successful investigations, prosecutions, or convictions, contributing to a culture of impunity among perpetrators.

The implementation of the law is further constrained by weak documentation and reporting systems, which make it difficult to accurately assess the scale and patterns of torture and ill-treatment. Victims and witnesses are often reluctant to report violations due to fear of intimidation, retaliation, or reprisals, particularly where the alleged perpetrators are state security officers. In addition, access to rehabilitation, psychosocial support, medical care, and compensation for survivors of torture remains limited, leaving many victims without adequate remedies and support for recovery.

Emerging concerns relating to abductions and enforced disappearances have also exposed gaps within the existing legal framework. While the Act addresses torture comprehensively, Kenya still lacks dedicated legislation specifically criminalizing enforced disappearances and establishing clear mechanisms for prevention, investigation, accountability, and victim redress. These challenges continue to impede the full realization of the right to freedom and security of the person as guaranteed under Article 29 of the Constitution.

345 Imanyara & 2 others v Attorney General [2016] KECA 557 (KLR). Available at https://new.kenyalaw.org/akn/ke/judgment/keca/2016/557/eng@2016-05-19

6.3 Independent Policing Oversight Authority (IPOA) Act

The Independent Policing Oversight Authority Act operationalizes Articles 244 and 245 of the Constitution and establishes an independent civilian oversight body responsible for monitoring police conduct and accountability. The Act serves as an important safeguard for the freedom and security of the person by promoting police accountability and investigating abuses committed by law enforcement officers.

6.3.1 Key Provisions Affecting Freedom and Security of the Person

Section 4 guarantees IPOA's independence by providing that it shall not be subject to the direction or control of any person or authority.

Section 6 outlines IPOA's functions, including investigating complaints against police officers, monitoring police operations, inspecting detention facilities, and making recommendations for disciplinary and criminal action.

Section 7 grants IPOA extensive investigative powers, including powers to summon witnesses, access documents, conduct inspections, and gather evidence.

These provisions are essential in protecting individuals against arbitrary arrest, unlawful detention, torture, enforced disappearances, extrajudicial killings, and excessive use of force.

In *Katiba Institute & Another v Attorney General & Another* (2021), the High Court emphasized the obligation of state institutions, including police oversight bodies, to investigate allegations of enforced disappearances, torture, and extrajudicial killings.

Similarly, in litigation arising from the 2024 anti-Finance Bill protests, including *Law Society of Kenya v Inspector General of Police & Others* (2024), courts directed investigations into allegations of police brutality, excessive use of force, and enforced disappearances. IPOA played a central role in receiving complaints and conducting investigations into these incidents.

6.3.2 Alignment with International Human Rights Standards

The IPOA framework is largely consistent with international and regional standards governing law enforcement accountability and the protection of human rights. The Act reflects the principles set out in the United Nations Code of Conduct for Law Enforcement Officials, which requires police officers to respect and protect human dignity and to uphold the human rights of all persons. It is further aligned with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which emphasize legality, necessity, proportionality, accountability, and restraint in the use of force.

The Authority's mandate to investigate deaths, injuries, and misconduct involving police officers is also consistent with the Minnesota Protocol on the Investigation of Potentially Unlawful Death, which establishes international standards for the effective, independent, impartial, and transparent investigation of deaths resulting from the actions or omissions of state actors. In addition, the IPOA framework supports the principles contained in the African Commission on Human and Peoples' Rights Guidelines for the Policing of Assemblies, which require law enforcement agencies to facilitate peaceful assemblies while respecting human rights and ensuring accountability for violations.

More broadly, the establishment of an independent civilian oversight body reflects international best practices on democratic policing and police accountability. By providing an external mechanism for investigating complaints against law enforcement officers, monitoring police conduct, and promoting transparency, the IPOA framework contributes to the prevention of torture, extrajudicial killings, enforced disappearances, arbitrary arrests, and other abuses that undermine the right to freedom and security of the person.

Challenges in Implementation

Despite its important role in promoting police accountability, IPOA continues to face several operational and institutional challenges that limit its effectiveness. One of the most significant constraints is the inadequate financial and human resources, which affect the Authority's ability to conduct timely investigations, maintain a nationwide presence, and effectively monitor police conduct nationwide. Resource limitations are particularly pronounced outside major urban centres, where access to IPOA services and complaint mechanisms remains limited.

The Authority also faces delays in investigations and prosecutions, often resulting in prolonged periods before victims and their families receive justice. While IPOA has investigative powers, it remains dependent on the Director of Public Prosecutions to institute criminal proceedings, which can create bottlenecks and delay accountability for perpetrators. In some instances, investigations have been hampered by non-cooperation from police officers and challenges in accessing information, records, and evidence necessary for effective inquiries.

Witness intimidation and fear of reprisals further undermine accountability efforts. Victims, witnesses, and even police officers willing to provide evidence may be reluctant to cooperate due to concerns about retaliation, particularly in cases involving serious allegations such as extrajudicial killings, torture, enforced disappearances, and excessive use of force. Additionally, the implementation rate of IPOA's recommendations remains relatively low, limiting the Authority's ability to translate its findings into meaningful disciplinary, administrative, or criminal action. Collectively, these challenges weaken oversight mechanisms and impede efforts to ensure accountability for human rights violations committed by law enforcement officers.

6.4 Victim Protection Act, 2014

The Victim Protection Act, 2014, was enacted pursuant to Article 50(9) of the Constitution, which requires Parliament to provide for the protection, rights, and welfare of victims of offences. The Act represents a significant shift from treating victims merely as witnesses to recognizing them as rights-holders and active participants within the criminal justice process.

The Act contributes significantly to freedom and security of the person by ensuring protection, participation, support, restitution, and compensation for victims of crime, including victims of torture, police abuse, gender-based violence, trafficking, and other serious human rights violations.

6.4.1 Key Provisions Affecting Freedom and Security of the Person

Section 9 guarantees victims the right to be heard and to participate in proceedings affecting their interests.

Section 10 guarantees the right to protection from intimidation, harassment, and secondary victimization.

Section 11 provides specific safeguards relating to the security of victims and their families.

Sections 13–15 establish mechanisms for victim participation and support services throughout criminal proceedings.

Section 22 requires the provision of victim services nationwide.

Section 27 establishes the Victim Protection Trust Fund to support compensation and assistance programs.

These provisions contribute to personal security by ensuring that victims are protected from further harm and can access justice safely and effectively.

6.4.2 Alignment with International Human Rights Standards

The Victim Protection Act, 2014, largely aligns with international and regional human rights standards on the protection of victims and access to justice. The Act gives effect to the principles contained in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), which recognizes the rights of victims to be treated with dignity and respect, to access justice, to participate in legal proceedings, and to obtain restitution, compensation, and assistance. By providing mechanisms for victim participation, protection, support services, and compensation, the Act seeks to place victims at the centre of the criminal justice process.

The legislation is also consistent with the International Covenant on Civil and Political Rights (ICCPR), particularly its provisions on effective remedies for rights violations, fair trial guarantees, and the protection of human dignity. At the regional level, the Act aligns with the African Charter on Human and Peoples' Rights, which obligates states to protect individuals from human rights violations and to ensure access to justice and appropriate remedies. In addition, the Act reflects the principles of the Nairobi Declaration on the Right to a Remedy and Reparation for Victims of Gross Human Rights Violations, which emphasizes victims' rights to truth, justice, compensation, rehabilitation, restitution, and guarantees of non-repetition.

Through its recognition of victims as rights-holders rather than mere witnesses, the Act incorporates internationally recognized standards on victim participation, protection from intimidation and secondary victimization, access to support services, restitution, compensation, and effective remedies. In doing so, it contributes to the realization of the right to freedom and security of the person by ensuring that victims of crime and human rights violations are protected, heard, and supported throughout the justice process.

Challenges in Implementation

Despite its progressive and victim-centred framework, the implementation of the Victim Protection Act continues to face several challenges that limit its effectiveness. A significant number of victims remain unaware of the rights and protections available to them under the Act, which reduces their ability to seek remedies and participate meaningfully in criminal justice processes. This challenge is compounded by inadequate public awareness initiatives and limited access to legal information, particularly in rural and marginalized communities.

The delivery of victim support services is further constrained by insufficient funding and the incomplete operationalization of institutional mechanisms established under the Act. As a result, many victims experience delays in accessing assistance, compensation, restitution, and other forms of support. The availability and quality of victim services also vary significantly across counties, creating disparities in access to justice and protection by geographic location.

In addition, psychosocial support systems remain weak and under-resourced, limiting the ability of victims to recover from the physical, emotional, and psychological effects of crime and human rights violations. Many victims continue to face barriers in obtaining compensation, particularly where compensation is linked to the successful prosecution and conviction of offenders. This can result in prolonged delays or complete denial of remedies, especially in cases where investigations are delayed or prosecutions are unsuccessful.

Although the Act established the Victim Protection Trust Fund as a mechanism for supporting victims and facilitating compensation, the Fund has remained largely underutilized and insufficiently visible to the public. Consequently, many victims are unable to benefit from the assistance envisaged under the legislation. These implementation challenges continue to undermine the Act's objective of providing effective protection, support, and remedies to victims, thereby limiting its contribution to the realization of the right to freedom and security of the person.

CHAPTER 7

CONCLUSION AND RECOMMENDATIONS

7.1 Conclusion: Emerging Opportunities and Trends in Kenya's Civic Space

Despite persistent challenges, including restrictions on fundamental freedoms, shrinking civic space, misuse of laws, excessive use of force by security agencies, and growing concerns about compliance with court orders, the period under review demonstrates that Kenya's civic space remains resilient and dynamic. The country continues to benefit from a robust constitutional framework, an increasingly vigilant citizenry, an active civil society sector, and a judiciary that has consistently acted as a critical guardian of constitutionalism. These developments offer important grounds for optimism and provide a foundation upon which further democratic gains can be built.

One of the most notable trends has been the emergence of new actors and champions of civic space. While traditional civil society organizations, media institutions, and human rights defenders continue to play a central role, recent years have witnessed the rise of youth-led movements, digital activists, community-based networks, social justice centres, and issue-based citizen coalitions. The 2024 Gen Z-led protests demonstrated the transformative potential of decentralized civic action, with young people mobilizing through digital platforms to demand accountability, transparency, and responsive governance. Independent content creators, digital rights advocates, fact-checking organizations, legal aid networks, and grassroots community organizers have also emerged as influential actors shaping public discourse and expanding citizen participation beyond conventional civic engagement structures. Their ability to mobilize, document human rights violations, challenge misinformation, and advocate for reform has contributed significantly to the vitality of Kenya's democratic space.

The legislative landscape has also witnessed important positive developments. Several laws and policy reforms have strengthened rights protection, accountability, and access to justice. The operationalization of the Public Benefits Organizations Act marked a significant milestone in improving the legal and regulatory environment for civil society organizations, addressing long-standing concerns over registration, regulation, and operational freedoms. Continued implementation of the Data Protection Act has strengthened safeguards for privacy and personal data, particularly in an increasingly digital society. Legislative and policy reforms aimed at enhancing access to information, promoting public participation, protecting victims of rights violations, and improving police accountability demonstrate the continued relevance of constitutional values in governance processes. While challenges remain in implementation, these developments reflect an evolving legal framework that increasingly recognizes the importance of citizen engagement and rights protection.

Perhaps the most significant gains have been achieved through the judiciary. Kenyan courts have consistently served as a critical bulwark against executive overreach and violations of constitutional rights. Through numerous decisions, the courts have reaffirmed the centrality of public participation, protected freedom of expression and media freedom, upheld digital rights, defended the right to peaceful assembly, and strengthened accountability mechanisms within public institutions. Judicial interventions have halted unconstitutional legislation, suspended unlawful administrative actions, protected media houses from censorship, and reaffirmed due process guarantees. Courts have also increasingly demonstrated

willingness to hold powerful state actors accountable through contempt proceedings and enforcement of constitutional obligations. These decisions have not only provided remedies in individual cases but have also strengthened democratic governance and constitutional culture more broadly.

Ultimately, Kenya's civic space remains contested but far from diminished. The emergence of new civic actors, the adoption of progressive legal reforms, and sustained judicial vigilance demonstrate the resilience of constitutional democracy. These positive developments underscore the enduring capacity of citizens and institutions to defend rights, expand participation, and advance accountability. Going forward, safeguarding and deepening these gains will require continued commitment from state institutions, civil society, the private sector, development partners, and citizens themselves. The future of civic space in Kenya will depend not only on resisting restrictions but also on nurturing the democratic innovations, legal protections, and institutional safeguards that have emerged during this period.

7.2 Recommendations and Action Plan for Engagement

The recommendations contained in this Compendium have been translated into an actionable two-year advocacy and legislative reform plan to guide implementation by key stakeholders. The plan identifies priority laws requiring reform, outlines specific recommendations, proposes practical advocacy and intervention strategies, and assigns lead and supporting actors responsible for advancing the reforms. It is intended to serve as a roadmap for civil society organizations, constitutional commissions, oversight bodies, media actors, development partners, professional associations, Parliament, and relevant government institutions working to strengthen civic space in Kenya. The two-year advocacy plan (2026–2028) provides a structured framework for coordinated action across the four core civic space freedoms - freedom of association, freedom of expression, freedom of assembly, and freedom and security of the person.

Type of Freedom	Legislation	Key Recommendation(s)	Advocacy Strategy / Intervention	Key Actors
Freedom of Association	Trustees (Perpetual Succession) Act & Trustees Act	Consolidate both laws and recognize unincorporated trusts	Legal reform process through Attorney General and Parliament; technical drafting committee; comparative legal studies	Civic Freedoms Forum, ICJ Kenya, KCDF, ICNL, EAPN, Attorney General, Kenya Law Reform Commission (KLRC), Development Partners
	Public Benefits Organizations Act	Implement High Court decision in *Otieno v AG*; establish Joint Committee; repeal criminal sanctions under Section 64; The AML and CTF amendments should be implemented using a risk-based approach consistent with FATF standards; Fast-track the establishment of the Enterprise resource planning (ERP) system to enhance registration and reporting for PBOs; Establish the Joint Committee in line with First Schedule, Part III to ensure collaborative implementation of the Act.	Strategic litigation where necessary; policy dialogue with PBO Authority; parliamentary engagement; donor-supported implementation	Civic Freedoms Forum, PBORA, ICNL, Diplomatic Missions, Parliamentary Committees

Type of Freedom	Legislation	Key Recommendation(s)	Advocacy Strategy / Intervention	Key Actors
	Community Groups Registration Act	The Cabinet Secretary should fast-track the publication of the regulations to standardize implementation of the Act; Repeal Section 2, 3(1), 3(2)(c) because they violate the rule of law and are impermissibly vague; Repeal section 28(2)(b) and 39 which introduce criminal sanctions contrary to the African Union Guidelines on Freedom of Association and Assembly in Africa; Repeal Sections 6(e) and (h) because it violate Articles 32, 33 and 36 of the Constitution; Repeal Sections 12-14 because they violate Articles 36 and 47 of the Constitution.	Constitutional challenge; public awareness campaigns; stakeholder consultations with State Department for Social Protection	CFF, SJCWG, Community-based organizations, KNCHR, State Department for Social Protection,
	Societies Act	Amend Sections 11 and 12 to limit discretionary powers and provide clearer criteria for refusal or cancellation of registration; Establish statutory timelines for registration and approval of amendments to society constitutions; Strengthen procedural safeguards, including mandatory hearings before adverse decisions are made.	Draft amendment bill; engagement with Registrar of Societies; parliamentary advocacy	Civil society coalitions, Law Society of Kenya (LSK), KLRC, Parliament
	Companies Act	Safeguard transparent registration and privacy protections; Include clear guidelines with specific timelines to avoid unnecessary delays	Draft amendment bill; Technical submissions during regulatory review; private sector-CSO dialogue	KEPSA, Transparency International Kenya, CSOs, Registrar of Companies
	Prevention of Terrorism Act	Amend Section 40C to remove approval requirements for CSO activities	Strategic litigation; engagement with National Counter Terrorism Centre (NCTC); human rights impact assessments	Human rights CSOs, NCTC, KNCHR, OHCHR, Diplomatic Missions
	Preservation of Public Security Act	Repeal overbroad powers restricting associations	Constitutional litigation and legislative reform campaign	CFF, KHRC, Katiba Institute, ICJ Kenya, Parliament, KNCHR
	Kenya Citizenship and Immigration Act	Strengthen accountability and compliance with court orders	Policy engagement with Immigration Department; legislative amendments	Refugee Consortium of Kenya, Kituo Cha Sheria, UNHCR, Parliament
Freedom of Expression	Kenya Broadcasting Corporation Act	Transform KBC into an independent public service broadcaster	Media reform campaign; legislative amendments; parliamentary engagement	Media Council of Kenya (MCK), Kenya Editors Guild, Media Owners Association, Parliament

Type of Freedom	Legislation	Key Recommendation(s)	Advocacy Strategy / Intervention	Key Actors
	Computer Misuse and Cybercrimes Act	Repeal restrictive provisions affecting online speech	Strategic litigation; digital rights advocacy; public campaigns	ARTICLE 19 Eastern Africa, CIPESA, BAKE, Paradigm Initiative, Katiba Institute
	Media Council Act	Strengthen independence of Media Council and Complaints Commission	Constitutional amendment advocacy; stakeholder dialogue	KMSWG, MCK, Kenya Editors Guild, Media Sector Working Group
	Kenya Information and Communications Act (KICA) & Kenya Information and Communications (Amendment) Bill of 2025	Repeal unconstitutional provisions; strengthen CA independence; Shelf the repressive amendment Bill	Parliamentary submissions; litigation; multi-stakeholder reform process	KMSWG, MCK, LSK, ARTICLE 19, Parliament, Communications Authority
	Data Protection Act	Increase budgetary allocation to ensure functioning of the ODPC; Strengthen journalistic exemptions and implementation	Regulatory engagement with Office of Data Protection Commissioner (ODPC); policy reform	ODPC, Media Sector Working Group, Digital Rights Organizations
	Registration of Persons Act	Establish an independent Office of the Commissioner of Registrar of Persons and develop clear, transparent vetting procedures for registration processes. Harmonize the Act with the Data Protection Act to strengthen privacy and data protection safeguards. Review the Act and develop a comprehensive legal and regulatory framework for the implementation of the National Integrated Identity Management System (NIIMS/ Huduma Namba) in compliance with constitutional requirements and the directives issued by the High Court in Petitions No. 56, 58 and 59 of 2019 (Consolidated).	Litigation monitoring; legislative reform advocacy	Nubian Rights Forum, Haki na Sheria Initiative, KNCHR
	Statistics Act	Amendment of Section 18 of the Statistics Act to provide clear procedures for by the KNBS Board on approval or disapproval of applications; Harmonization of the roles of the KNBS Board and the National Council for Science and Technology Innovation (NACOSTI) in approving research relating to surveys;	Engagement with KNBS and NACOSTI; policy review	Research institutions, Universities, KNBS, NACOSTI

Type of Freedom	Legislation	Key Recommendation(s)	Advocacy Strategy / Intervention	Key Actors
	Defamation Act	Introduce public interest defense and proportionality standards; Amendment to include the definition of defamation and the related offences of libel and slander and the addition of public interest as ground for defense.	Law reform initiative; comparative jurisprudence advocacy	CFF, LSK, Media Council, ARTICLE 19
	Access to Information Act	The CAJ should be required to publish and disseminate the reports on the extent of compliance by private and public institutions with the Act; Fast-track urgent requests and strengthen compliance reporting	Administrative reforms; advocacy before CAJ	Katiba Institute, CFF, CAJ, Transparency International Kenya, Media Houses
	Witness Protection Act	Improve accountability and oversight; Improve budgetary allocation to WPA	Parliamentary review and stakeholder consultations	TI Kenya, CFF, Witness Protection Agency, KNCHR, LSK
	Whistleblower Protection Bill	Fast-track the enactment of the Bill	Legislative engagement and public consultations	EACC, Transparency International Kenya, Parliament
	Penal Code	Repeal unconstitutional speech offences and decriminalize defamation	Legislative reform campaign and strategic litigation	PRWG, CFF, LSK, ARTICLE 19, ICJ Kenya, Parliament
Freedom of Assembly	Public Order Act	Comprehensive overhaul to align with Constitution and ACHPR Guidelines	National campaign for assembly law reform; police-CSO dialogue; strategic litigation	Police Reforms Working Group, IPOA, KNCHR, LSK, Parliament
	Preservation of Public Security Act	Remove provisions allowing blanket bans on assemblies	Constitutional litigation and legislative reform	Katiba Institute, KNCHR, Civil Society Coalitions
	Penal Code	Reform definition of unlawful assembly	Legislative review and constitutional challenge	PRWG, CFF, LSK, ICJ Kenya, Parliament
	Protected Areas Act	Review restrictions affecting public assembly	Parliamentary review; engagement with security agencies and county governments	KNCHR, County Governments, Civil Society Coalitions
Freedom and Security of the Person	Prevention of Torture Act	Strengthen investigations and prosecutions of torture cases to deter impunity; Enhance training of police, prison, and security officers on the Act and human rights standards; Increase funding and independence of oversight institutions such as IPOA and KNCHR; Establish specialized victim rehabilitation and compensation programs; Improve documentation and reporting of torture allegations. Enact a comprehensive legislation on Enforced Disapearances	Parliamentary review; National anti-torture campaign; litigation; survivor-centered advocacy; engagement with Ministry of Interior	KNCHR, IPOA, Missing Voices Coalition, KHRC, Amnesty International Kenya, OHCHR

Type of Freedom	Legislation	Key Recommendation(s)	Advocacy Strategy / Intervention	Key Actors
	IPOA Act	Increase budgetary allocations and staffing for IPOA; Strengthen witness protection mechanisms for complainants; Enhance cooperation between IPOA, the DPP and the judiciary to expedite accountability processes; Public education on evidence collection; Expand county-level IPOA presence to improve accessibility.	Budget advocacy; parliamentary oversight; donor support; public accountability campaigns	IPOA, Parliament, KNCHR, Development Partners, Civil Society
	Victim Protection Act, 2014	Fully operationalize and adequately fund the Victim Protection Trust Fund; Establish accessible victim support centres in all counties; Strengthen legal aid, counselling, and psychosocial support services; Simplify compensation procedures and expand access to reparations; Enhance public awareness of victims' rights and available remedies.	Budget advocacy; parliamentary oversight; donor support;	Victim Protection Board; KNCHR; CFF; PRWG; ICJ Kenya; LSK, Development Partners, Parliamentary Committee on Finance
	National Police Service Framework	Strengthen accountability for unlawful arrests, enforced disappearances, and excessive force	Strategic litigation; police reform dialogue; independent investigations	PRWG, IPOA, ODPP, Judiciary, Missing Voices Coalition, Diplomatic Missions
	Proposed Enforced Disappearances Legislation	Enact Enforced Disappearances Legislation to: criminalize enforced disappearances; establish accountability mechanisms; establish a centralized National Missing and Unidentified Persons System	Drafting and sponsoring legislation; coalition advocacy; international pressure	PRWG, Missing Voices Coalition, KNCHR, Parliament, OHCHR, African Commission on Human and Peoples' Rights

ABOUT THIS COMPENDIUM

This second edition examines the laws, policies, practices and emerging trends that shaped civic freedoms in Kenya between 2021 and 2026 — from lawfare and the weaponization of state institutions to SLAPP suits, digital repression and the resilience of youth-led movements. It offers practical recommendations and an advocacy roadmap to strengthen civic space, reform restrictive laws and protect democratic participation.

> **“Civic space is the foundation upon which constitutional democracy, accountable governance, human rights protection, and meaningful public participation are built.**
>
> MAINA KIAI · CHAIRMAN, KENYA HUMAN RIGHTS COMMISSION

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