

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E 705 OF 2025

**IN THE MATTER OF: THE CONSTITUTION OF KENYA, 2010 AND IN
PARTICULAR ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 24, 27, 28, 31, 33, 34, 35, 47, 50, 159,
160, 165(3)(b), (d), 232(1), AND 259 THEREOF.**

AND

**IN THE MATTER OF THE ALLEGED INFRINGEMENT OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 27, 28, 31, 33, 34, 35, 47 AND 50 OF
THE CONSTITUTION OF KENYA 2010.**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2013**

AND

**IN THE MATTER OF THE COMPUTER MISUSE AND CYBERCRIMES
(AMENDMENT) ACT, 2025, NO. 17 OF 2025, AND IN PARTICULAR SECTIONS 3
AND 4 THEREOF:**

**THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ-
KENYA).....1ST PETITIONER**

ARTICLE 19 EAST AFRICA.....2ND PETITIONER

BLOGGERS ASSOCIATION OF KENYA (BAKE).....3RD PETITIONER

VS

THE HON. ATTORNEY-GENERAL.....1ST RESPONDENT

**THE CABINET SECRETARY, MINISTRY OF INFORMATION, COMMUNICATIONS
AND THE DIGITAL ECONOMY2ND RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF INTERIOR AND NATIONAL
ADMINISTRATION.....3RD RESPONDENT**

**THE COMMUNICATIONS AUTHORITY OF KENYA
(CAK)..... 4TH RESPONDENT**

**THE INSPECTOR-GENERAL (IG) OF THE NATIONAL POLICE
SERVICE.....5TH RESPONDENT**

THE DIRECTOR OF PUBLIC PROSECUTIONS.....6TH RESPONDENT

AMNESTY INTERNATIONAL KENYA.....INTERESTED PARTY

PETITION

**TO: THE HIGH COURT OF KENYA AT NAIROBI,
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
NAIROBI.**

THE HUMBLE PETITION OF THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ-KENYA) , ARTICLE 19 EAST AFRICA, AND BLOGGERS ASSOCIATION OF KENYA (BAKE) WHOSE ADDRESS OF SERVICE FOR PURPOSE OF THIS SUIT SHALL BE CARE OF: MITULLAH AND COMPANY ADVOCATES, 2ND FLOOR, ROOM 1, SADILI OVAL, OFF KITENGELA ROAD, LANGATA, P.O BOX 609-00517,NAIROBI, KENYA AND EMAIL: mitullahcoadvocates@gmail.com AND TELEPHONE NUMBER: 0743944451.

A. INTRODUCTION

1. This is a Constitutional Petition brought pursuant to Articles 22, 23, 165(3), 258, and 259 of the Constitution of Kenya, 2010, seeking redress for the violation, infringement, and threat to fundamental rights and freedoms guaranteed under Articles 2, 3, 10, 19, 20, 21, 24, 27, 28, 31, 33, 34, 35, 47, 50, 159, 160, 232, and 259 of the Constitution, arising

from the enactment of the Computer Misuse and Cybercrimes (Amendment) Act, 2025, No. 17 of 2025, and in particular Sections 3 and 4 thereof.

2. The Petition challenges the constitutionality of two specific provisions of the Computer Misuse and Cybercrimes (Amendment) Act 2025 (“the Amendment Act”) that fundamentally violate the rights to freedom of expression, media freedom, access to information, fair administrative action, and fair hearing:
 - a) Section 3, which amends Section 6 of the Computer Misuse and Cybercrimes Act, 2018 by granting the National Computer and Cybercrimes Coordination Committee (“the **Committee**”) the power to shut down websites and applications without judicial oversight; and
 - b) Section 4, which amends Section 27 of the Computer Misuse and Cybercrimes Act, 2018 by introducing vague and overbroad criminal offences based on speculative psychological impact.
3. The Petitioners invoke this Honourable Court's jurisdiction under Articles 22(1) and 23(1) of the Constitution to protect and enforce the Bill of Rights, and under Article 165(3)(b) for the determination of any question involving the interpretation of the Constitution and the constitutionality of legislation.
4. This Petition raises profound constitutional questions regarding:
 - a) The separation of powers between the Executive and the Judiciary;
 - b) The independence of the Judiciary in matters involving fundamental rights;
 - c) The constitutional standards for permissible limitations on freedom of expression;
 - d) The principle of legality and the requirement for clarity and precision in criminal law;
 - e) The procedural safeguards required before fundamental rights can be restricted;
 - f) Kenya's obligations under international human rights law.

B. THE PARTIES

THE PETITIONERS

5. The 1st Petitioner, THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ-KENYA) is a registered non-profit, human rights Society, working to enhance justice, respect for the rule of law, democratic

governance, advocacy on cyber security sector laws and policies and legal redress for violation of human rights.

6. The 1st Petitioner has standing to bring this Petition under Article 22(2) of the Constitution as:
 - a) Its mandate directly relates to the rights threatened by the impugned legislation;
 - b) The Amendment Act affects its work and that of its members/beneficiaries;
 - c) It brings this action in the public interest and on behalf of persons whose rights may be affected.
7. The 2nd Petitioner, ARTICLE 19 EAST AFRICA, is a leading regional organization dedicated to promoting and protecting freedom of expression, access to information, and digital rights across East Africa.
8. ARTICLE 19 EAST AFRICA is established to defend and promote Article 19 of the Universal Declaration of Human Rights, which guarantees freedom of expression and information. The organization works throughout East Africa to promote and protect the right to freedom of expression, including through strategic litigation, policy advocacy, research, and capacity building.
9. ARTICLE 19 EAST AFRICA has extensive expertise in:
 - a) Freedom of expression law and policy;
 - b) Digital rights and internet governance;
 - c) Media freedom and the safety of journalists;
 - d) Access to information and transparency;
 - e) Constitutional and human rights litigation.
10. ARTICLE 19 EAST AFRICA has standing to bring this Petition under Article 22(2) of the Constitution as:
 - a) The Amendment Act directly affects freedom of expression and access to information, which are central to its organizational mandate;
 - b) It acts in the public interest to protect fundamental rights enshrined in the Constitution and international human rights law;

- c) It represents and works with numerous individuals and organizations whose rights are threatened by the impugned provisions;
- d) It has expertise and experience in constitutional challenges to laws restricting freedom of expression.

11. The 3rd Petitioner, BLOGGERS ASSOCIATION OF KENYA (“BAKE”), is the premier membership organization representing bloggers, digital content creators, online journalists, and digital media practitioners in Kenya.

12. BAKE's mission is to promote and defend freedom of expression online, foster responsible digital citizenship, support the growth of Kenya's digital content creation industry, and advocate for policies that enable a free and open internet.

13. BAKE and its members are directly and immediately affected by the Amendment Act as:

- a) Its members operate websites and online platforms that are now subject to arbitrary shutdown under Section 6(1)(ja);
- b) Its members create and publish online content that may be criminalized under the vague provisions of Section 27 as amended;
- c) Its members work in an environment of fear and uncertainty created by the Amendment Act;
- d) Several of its members have already received warnings or threats related to their online content since the Amendment Act came into force;
- e) The Amendment Act has created a severe chilling effect that directly impairs its members' ability to exercise their constitutional rights to freedom of expression and media freedom.

14. BAKE has standing to bring this Petition under Article 22(2) of the Constitution as:

- a) The rights of its members are directly violated and threatened by the impugned provisions;
- b) It acts on behalf of its members and the broader community of digital content creators, online journalists, and internet users in Kenya;
- c) The constitutional questions raised affect the public interest and democratic governance in Kenya;

- d) It has a legitimate organizational interest in protecting the rights and freedoms of digital content creators.

THE INTERESTED PARTY

- 15. Amnesty International Kenya is a leading human rights organization working to protect and promote human rights in Kenya and globally, with particular focus on civil and political rights including freedom of expression, media freedom, and digital rights.
- 16. Amnesty International Kenya has been admitted as an Interested Party in these proceedings given its:
 - a) Expertise in human rights law, constitutional litigation, and international human rights standards;
 - b) Mandate to protect freedom of expression and other fundamental rights;
 - c) Extensive experience in monitoring and documenting violations of freedom of expression in Kenya and globally;
 - d) Ability to provide valuable perspectives on international human rights standards relevant to this case;
 - e) Interest in ensuring that Kenyan laws comply with the Constitution and Kenya's international human rights obligations.

THE RESPONDENTS

- 17. The 1st Respondent, THE HON. ATTORNEY-GENERAL, is the principal legal adviser to the Government of Kenya and is sued in her official capacity pursuant to Article 156 of the Constitution.
- 18. The 1st Respondent is responsible for representing the national government in legal proceedings and has the duty to uphold the Constitution and defend the rule of law.
- 19. The 1st Respondent's address for service is: THE HON. ATTORNEY-GENERAL'S CHAMBERS, 7TH FLOOR, SHERIA HOUSE, HARAMBEE AVENUE, P. O. BOX 40112, NAIROBI, Email: communications@ag.go.ke
- 20. The 2nd Respondent, THE CABINET SECRETARY, MINISTRY OF INFORMATION, COMMUNICATIONS AND THE DIGITAL ECONOMY, is a government official

appointed under Article 152 of the Constitution, responsible for developing and implementing policies on communications, broadcasting, digital economy, and information technology.

21. The 2nd Respondent is sued in his official capacity for actions related to the formulation, implementation, and enforcement of the impugned legislation.
22. The 2nd Respondent's address for service is: TELPOSTA TOWERS (7TH–11TH FLOORS), KOINANGE STREET, P.O. BOX 30025-00100, NAIROBI, KENYA. TELEPHONE: +254-020-4920000 / +254-020-492003, Email: info@information.go.ke
23. The 3rd Respondent, THE CABINET SECRETARY, MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION, is a government official appointed under Article 152 of the Constitution, responsible for maintaining internal security, overseeing national registration services, managing immigration policies and coordinating National Government functions.
24. The 3rd Respondent is sued in his official capacity for actions related to the implementation and enforcement of the impugned legislation, especially through the actions of the Committee.
25. The 3rd Respondent's address for service is: HARAMBEE HOUSE ,HARAMBEE AVENUE, P.O BOX 30510-00100, NAIROBI, KENYA, TELEPHONE: +254-20-2227411, Email: psinterior@interior.go.ke.
26. The 4th Respondent, THE COMMUNICATIONS AUTHORITY OF KENYA (CAK), is a statutory regulator established under the Kenya Information and Communications Act, Cap 411A.
27. The 4th Respondent oversees regulation of the information and communications sector, including broadcasting, telecommunications, electronic media, and postal services.

28. The 4th Respondent is sued in its official capacity as the primary regulatory body responsible for implementing content restrictions and takedown directives under the impugned legislation.
29. The 4th Respondent's address for service is: CA CENTRE, WAIYAKI WAY, WESTLANDS, P.O. Box 14448-00800, Nairobi. Tel: +254 (0)703 042000 / +254 (0)730 172000. Email: info@ca.go.ke
30. The 5th Respondent, THE INSPECTOR-GENERAL (IG) OF THE NATIONAL POLICE SERVICE, is established under Article 245 of the Constitution and operationalized by the National Police Service Act, No. 11A of 2011.
31. The 5th Respondent is responsible for the command and control of the National Police Service and the enforcement of criminal law, including the provisions of the Computer Misuse and Cybercrimes Act as amended.
32. The 5th Respondent is sued in his official capacity as the law enforcement authority responsible for investigating and prosecuting offences under Section 27 of the Principal Act as amended.
33. The 5th Respondent's address for service is: INSPECTOR-GENERAL, NATIONAL POLICE SERVICE HEADQUARTERS, JOGOO HOUSE "A", TAIFA ROAD, P.O. BOX 30083-00100, NAIROBI, KENYA. TEL: +254 (0)20 2110671, Email: nps@nationalpolice.go.ke
34. The 6th Respondent, THE DIRECTOR OF PUBLIC PROSECUTION, is appointed under Article 157 (2) of the Constitution and heads the Office of the Director of Public Prosecution that is mandated to initiate, take over, continue, or discontinue criminal proceedings in any court other than a court martial, and has the power to direct and oversee criminal investigations.
35. The 6th Respondent is sued in his official capacity as the authority responsible for initiating and carrying out criminal proceedings that court ensues from enforcement of the Amendment Act.

36. The 6th Respondent's address for service is: OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS, PROSECUTORS TRAINING INSTITUTE BUILDING RIDGE WAYS ROAD, OFF KIAMBU ROAD, P.O. BOX 30701-00100, NAIROBI, TEL: +254 (0)20 2717150, Email: info@odpp.go.ke.

C. LEGAL FOUNDATION OF THE PETITION

37. This Petition is grounded in the following provisions of the Constitution of Kenya, 2010:

ARTICLE 2 - SUPREMACY OF THE CONSTITUTION

38. Article 2(1) and (2) establish the supremacy of the Constitution and provide that the Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government. Any law, including an Act of Parliament, that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.

ARTICLE 3 - DEFENCE OF THE CONSTITUTION

39. Article 3(1) provides that every person has an obligation to respect, uphold and defend this Constitution. The Petitioners bring this action in fulfillment of their constitutional obligation to defend the Constitution against laws that violate fundamental rights and freedoms.

ARTICLE 10 - NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE

40. Article 10 establishes the national values and principles of governance, which bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets the Constitution, enacts, applies or interprets any law, or makes or implements public policy decisions.

41. The national values and principles of governance include:

- a) Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- b) Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;
- c) Good governance, integrity, transparency and accountability; and
- d) Sustainable development.

ARTICLES 19, 20, AND 21 - THE BILL OF RIGHTS

42. Article 19 affirms that the Bill of Rights is an integral part of Kenya's democratic state and provides the framework for social, economic, cultural and political policies. The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.
43. Article 20 ensures that the Bill of Rights applies to all law and binds all State organs and all persons. Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
44. Article 21 places a fundamental duty on the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

ARTICLE 22 - ENFORCEMENT OF BILL OF RIGHTS

45. Article 22(1) provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
46. Article 22(2) provides that a person acting in the public interest may institute court proceedings, and a person may institute proceedings on behalf of another person who cannot act in their own name.

ARTICLE 23 - AUTHORITY OF COURTS TO UPHOLD AND ENFORCE THE BILL OF RIGHTS

47. Article 23 gives the High Court jurisdiction to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
48. Article 23(3) empowers the High Court to grant appropriate relief, including:
- a) A declaration of rights;
 - b) An injunction;
 - c) A conservatory order;

- d) A declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
- e) An order for compensation; and
- f) An order of judicial review.

ARTICLE 24 - LIMITATION OF RIGHTS AND FUNDAMENTAL FREEDOMS

49. Article 24 sets out the constitutional thresholds that must be met before rights and fundamental freedoms in the Bill of Rights can be limited.

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

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

51. Despite the above, a provision in legislation limiting a right or fundamental freedom is not valid unless the legislation specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation.

52. A provision in legislation shall not be construed as limiting a right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation.

53. A provision in legislation shall not limit a right or fundamental freedom so far as to derogate from its core or essential content.

ARTICLE 27 - EQUALITY AND FREEDOM FROM DISCRIMINATION

54. Article 27 guarantees the right to equality and freedom from discrimination. Every person is equal before the law and has the right to equal protection and equal benefit of the law.

ARTICLE 28 - HUMAN DIGNITY

55. Article 28 provides that every person has inherent dignity and the right to have that dignity respected and protected.

ARTICLE 31 - PRIVACY

56. Article 31 provides that every person has the right to privacy, which includes the right not to have information relating to their family or private affairs unnecessarily required or revealed.

ARTICLE 33 - FREEDOM OF EXPRESSION

57. Article 33(1) provides that every person has the right to freedom of expression, which includes:

- a) Freedom to seek, receive or impart information or ideas;
- b) Freedom of artistic creativity; and
- c) Academic freedom and freedom of scientific research.

58. Article 33(2) provides that the right to freedom of expression does not extend to:

- a) Propaganda for war;
- b) Incitement to violence;
- c) Hate speech; or
- d) Advocacy of hatred that:
 - i) Constitutes ethnic incitement, vilification of others or incitement to cause harm; or
 - ii) Is based on any ground of discrimination specified or contemplated in Article 27(5).

59. The limitations on freedom of expression in Article 33(2) are narrow, specific, and exhaustive.

ARTICLE 34 - FREEDOM AND INDEPENDENCE OF MEDIA

60. Article 34(1) provides that freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33(2).

61. Article 34(2) provides that the State shall not:

- a) Exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or
- b) Penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.

62. Article 34(3) provides that broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that are necessary to regulate the airwaves and other forms of signal distribution, and are independent of control by State or State organs.

ARTICLE 35 - ACCESS TO INFORMATION

63. Article 35(1) provides that every citizen has the right of access to:

- a) Information held by the State; and
- b) Information held by another person and required for the exercise or protection of any right or fundamental freedom.

64. Article 35(3) provides that the State shall publish and publicize any important information affecting the nation.

ARTICLE 47 - FAIR ADMINISTRATIVE ACTION

65. Article 47(1) provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

66. Article 47(2) provides that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

67. Article 47(3) provides that every person has the right to judicial review of administrative action.

ARTICLE 50 - FAIR HEARING

68. Article 50(1) provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
69. Article 50(2) guarantees the right to a fair trial in criminal proceedings, including the right to be informed of the charge with sufficient detail to answer it, which requires that criminal offences be clearly and precisely defined.

ARTICLE 159 - JUDICIAL AUTHORITY

70. Article 159(1) provides that judicial authority is derived from the people and vests in, and shall be exercised by, courts and tribunals established by or under this Constitution.

ARTICLE 160 - INDEPENDENCE OF THE JUDICIARY

71. Article 160 provides that in the exercise of judicial authority, the Judiciary shall be subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority.

ARTICLE 165 - JURISDICTION OF THE HIGH COURT

72. Article 165(3)(b) vests the High Court with jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.
73. Article 165(3)(d) vests the High Court with jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of:
- a) The question whether any law is inconsistent with or in contravention of the Constitution;
 - b) The question whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of, the Constitution;
 - c) Any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - d) A question relating to conflict of laws under Article 191.

ARTICLE 232 - VALUES AND PRINCIPLES OF PUBLIC SERVICE

74. Article 232(1) establishes the values and principles of public service, which include:

- a) High standards of professional ethics;
- b) Efficient, effective and economic use of resources;
- c) Responsive, prompt, effective, impartial, equitable and fair provision of services;
- d) Involvement of the people in the process of policy making;
- e) Accountability for administrative acts;
- f) Transparency and provision to the public of timely, accurate information.

ARTICLE 258 - STANDING

75. Article 258(1) provides that a person may apply to the High Court for an order that a provision of legislation or conduct is inconsistent with or is in contravention of a provision of the Constitution.

76. Article 258(2) provides that an application may be made under clause (1)—

- a) By any person on the ground that a provision of legislation or conduct is inconsistent with or in contravention of a provision in the Bill of Rights or a provision of Chapter Six;
- b) By any person on the ground that a provision of legislation is inconsistent with or in contravention of any provision of this Constitution, other than the Bill of Rights and Chapter Six; or
- c) By any person acting in the public interest, or any association acting in the interest of its members or a class of persons.

ARTICLE 259 - INTERPRETATION OF THE CONSTITUTION

77. Article 259(1) provides that this Constitution shall be interpreted in a manner that:

- a) Promotes its purposes, values and principles;
- b) Advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- c) Permits the development of the law; and
- d) Contributes to good governance.

78. Article 259(2) and (3) require that interpretation of the Constitution take into account the history, culture, and aspirations of Kenyan society and promote the progressive development of human rights.

D. FACTS GIVING RISE TO THE PETITION

THE COMPUTER MISUSE AND CYBERCRIMES ACT, 2018

79. The Computer Misuse and Cybercrimes Act, 2018 (Cap. 79C) (hereinafter "**the Principal Act**") was enacted to provide for offences relating to computer systems; to enable timely and effective detection, prohibition, prevention, response, investigation and prosecution of computer and cybercrimes; to facilitate international co-operation in dealing with computer and cybercrime matters; and for connected purposes.

80. Section 6 of the Principal Act, before amendment, established the National Computer and Cybercrimes Co-ordination Committee and outlined its functions.

81. Section 6(1) provided that the Committee shall:

- a) co-ordinate and provide oversight in the implementation of this Act;*
- b) facilitate co-operation and co-ordination among law enforcement agencies, prosecution authorities, regulatory agencies, the National Computer and Cyberspace Security Coordinator and relevant private sector players, in the investigation and prosecution of cybercrimes in the country;*
- c) provide a platform for and facilitate information exchange and sharing between local and international law enforcement agencies, prosecution authorities and the National Computer and Cyberspace Security Coordinator, in matters relating to computer and cybercrimes;*
- d) establish mechanisms for consultation between the Government and private sector organisations and non-governmental organisations with respect to cybercrime issues;*
- e) receive, collate and disseminate information to the stakeholders on cybercrime issues;*
- f) receive periodic reports from the agencies in paragraphs (a), (b) and (c) on the activities undertaken by them under this Act;*
- g) advise the national government, county governments, public and private sector organisations and non-governmental organisations on cyber threats and other related matters;*

- h) advise the Inspector-General of Police on any technical assistance required for efficient and effective implementation of this Act;*
- i) undertake research on cybercrimes and related matters; and*
- j) perform such other functions as may be necessary for the proper discharge of its functions under this Act.*

82. Notably, the original Section 6 did not grant the Committee any powers to shut down websites, block online content, or issue directives to restrict access to online platforms. The Committee was intended to be a coordination and advisory body, not an enforcement or censorship authority.

83. Section 27 of the Principal Act, before amendment, provided:

"27. (1) A person who intentionally publishes false, misleading or fictitious data or misinformation through a computer system, where such data or misinformation —

- a) is likely to be perceived as authentic or genuine based on how it is packaged or presented;*
- b) is calculated to result in panic, chaos, or violence or has the capability to discredit the reputation of a person or that is likely to create enmity or ill-will, hatred between different groups of persons or communities or incites an unlawful act; or*
- c) amounts to disinformation that is likely to mislead the public on a matter of public interest,*

commits an offence and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding ten years, or to both."

84. While the original Section 27 was already problematic in its breadth and vagueness, it did not criminalize expression based on speculative psychological impact such as the likelihood of causing suicide.

THE AMENDMENT PROCESS

85. The Computer Misuse and Cybercrimes (Amendment) Bill, 2024 was introduced in Parliament in August 2024.

86. The Amendment Bill was rushed through the legislative process without meaningful public participation or consultation with stakeholders.

87. Civil society organizations, media groups, digital rights advocates, and members of the public raised serious constitutional concerns about the Bill during the limited period available for public comment, but these concerns were ignored.
88. The Bill was passed by Parliament and assented to by His Excellency the President on 15th October 2025.
89. The Computer Misuse and Cybercrimes (Amendment) Act, 2025, No. 17 of 2025, was published in Kenya Gazette Supplement No. 170 (Acts No. 17) dated 21st October 2025.
90. The Amendment Act shall come into operation on 4th November 2025, pursuant to Section 1 which provides that "This Act may be cited as the Computer Misuse and Cybercrimes (Amendment) Act, 2025" and "This Act shall come into operation on the date of its publication."
91. The Amendment Act shall come into force on 4th November 2025.

THE IMPUGNED PROVISIONS

SECTION 3 - AMENDMENT OF SECTION 6 OF CAP. 79C

92. Section 3 of the Amendment Act amends Section 6 of the Principal Act in subsection (1) by inserting the following new paragraph immediately after paragraph (j):

"(ja) where it is proved that a website or application promotes unlawful activities, inappropriate sexual content of a minor, terrorism or religious extremism and cultism, issue a directive to render the website or application inaccessible."

93. This provision dramatically and unconstitutionally expands the powers of the Committee by transforming it from a coordination and advisory body into an enforcement and censorship authority with power to shut down websites and applications.
94. The provision suffers from numerous fatal constitutional defects:

VAGUENESS AND OVERBREADTH

95. The provision uses terms that are vague, undefined, and overbroad:

- a) "Unlawful activities" is not defined and could encompass any conduct that allegedly violates any law, regardless of the gravity of the violation, the public interest in the information, or the constitutional protection for the expression;
- b) "Inappropriate sexual content of a minor" is not defined and introduces the subjective term "inappropriate" rather than using established legal concepts such as "child sexual abuse material" or content that is illegal under the Sexual Offences Act or the Children Act;
- c) "Terrorism" is defined in the Prevention of Terrorism Act, but the provision does not clarify whether it applies to content that constitutes terrorism itself, or merely discusses, reports on, analyzes, or critiques terrorism and counter-terrorism policies;
- d) "Religious extremism" is not defined anywhere in Kenyan law and is an inherently subjective, contested, and culturally loaded term that could be applied to a wide range of religious, spiritual, philosophical, or ideological content;
- e) "Cultism" is not defined and is an exceptionally vague term that has no established legal meaning and could be applied to virtually any non-mainstream religious, spiritual, or ideological movement or belief system.

96. The provision does not specify what it means for a website or application to "promote" the prohibited content. It is unclear whether:

- a) The website operator must have the intent to promote the content;
- b) The website must actively advocate for the prohibited activities;
- c) It is sufficient that the website merely hosts, links to, or provides access to content that discusses or depicts the prohibited activities;
- d) News reporting, academic analysis, or artistic expression that discusses the prohibited topics would be deemed to "promote" them.

97. The vagueness and overbreadth of these terms create profound legal uncertainty and expose a wide range of constitutionally protected expression to arbitrary censorship.

LACK OF PROCEDURAL SAFEGUARDS

98. The provision does not specify:

- a) What standard of proof is required for it to be "proved" that a website or application promotes the prohibited content (balance of probabilities, beyond reasonable doubt, reasonable suspicion, etc.);
- b) Who has the burden of proving that the website promotes prohibited content;
- c) What evidence is required to support a finding that the website promotes prohibited content;
- d) What procedural steps must be taken before a directive is issued;
- e) Whether notice must be given to the website operator, content creator, or affected parties;
- f) Whether a hearing or opportunity to be heard is required before the directive is issued;
- g) What criteria, guidelines, or standards govern the exercise of this power;
- h) Whether the Committee must consider less restrictive alternatives before shutting down a website;
- i) What remedies or appeal mechanisms are available to challenge a directive;
- j) How long a directive remains in effect;
- k) Under what circumstances access may be restored;
- l) What accountability mechanisms exist if the power is abused.

99. The complete absence of procedural safeguards means that websites can be shut down arbitrarily, without notice, without hearing, and without any opportunity for judicial review before the censorship is implemented.

USURPATION OF JUDICIAL AUTHORITY

100. The provision vests in an administrative committee the power to:

- a) Determine questions of law (whether content constitutes "unlawful activities," "terrorism," "religious extremism," etc.);
- b) Make findings of fact (whether a website "promotes" the prohibited content);
- c) Weigh rights and interests (balancing freedom of expression against other concerns);
- d) Issue binding orders that directly and severely restrict fundamental rights (shutting down websites).

101. These are inherently judicial functions that, under the Constitution, can only be exercised by the Judiciary.

102. The power to restrict fundamental rights is a judicial power that derives from Article 159 and cannot be delegated to administrative authorities.
103. By vesting censorship powers in an administrative committee rather than the Judiciary, the provision violates the separation of powers and undermines the independence of the Judiciary.

PRIOR RESTRAINT WITHOUT JUDICIAL OVERSIGHT

104. The power to shut down websites constitutes prior restraint on expression—the most severe form of limitation on freedom of expression.
105. Under constitutional and international human rights law, prior restraints on expression are:
- a) Presumptively unconstitutional;
 - b) Subject to the strictest scrutiny;
 - c) Permissible only in the most exceptional circumstances;
 - d) Required to meet stringent procedural safeguards including prior judicial authorization.
106. The provision allows prior restraint to be imposed by an administrative committee without any judicial oversight, violating the constitutional requirement that limitations on fundamental rights be subject to judicial review.

SECTION 4 - AMENDMENT OF SECTION 27 OF CAP. 79C

107. Section 4 of the Amendment Act amends Section 27 of the Principal Act in subsection (1) by inserting the words "or is likely to cause them to commit suicide" immediately after the word "person" appearing in paragraph (b).
108. As a result of this amendment, Section 27(1)(b) now provides that a person commits an offence if they intentionally publish false, misleading or fictitious data or misinformation through a computer system, where such data or misinformation "is calculated to result in panic, chaos, or violence or is likely to cause them to commit suicide or has the capability to discredit the reputation of a person..."

109. This amendment introduces an entirely new category of criminal liability based on speculative and inherently subjective determinations of psychological impact.

110. The phrase "likely to cause them to commit suicide" suffers from fatal constitutional defects:

FUNDAMENTAL VAGUENESS

111. The provision does not define what degree of "likelihood" is required. It is entirely unclear whether:

- a) Any remote possibility of suicide, however speculative, suffices for criminal liability;
- b) A substantial risk or probability of suicide must be shown;
- c) The likelihood must be assessed at the time of publication or in hindsight;
- d) The speaker must have intended or foreseen the likelihood of suicide;
- e) The likelihood applies to any person who might be exposed to the content or only to specific identified individuals.

112. The provision does not specify how such likelihood is to be assessed, what evidence is required, or who has the burden of proof.

113. The provision fails to account for the complex causation of suicide, which medical and psychological research has established typically involves:

- a) Pre-existing mental health conditions such as depression, anxiety, bipolar disorder, or schizophrenia;
- b) Personal circumstances such as relationship breakdown, financial stress, unemployment, or social isolation;
- c) Substance abuse or addiction;
- d) Previous suicide attempts or family history of suicide;
- e) Access to means of suicide;
- f) Cluster effects or social contagion;

Multiple interacting risk and protective factors that vary greatly between individuals and contexts.

114. Attributing causation or even "likelihood" of suicide to a single piece of online content, without regard to these complex intervening factors, is psychologically and scientifically untenable.

115. The provision criminalizes speech based on the subjective sensitivities and reactions of recipients rather than objective harm or intent.

IMPOSSIBILITY OF LEGAL CERTAINTY

116. The vagueness of the provision makes it impossible for speakers to know in advance what expression is prohibited.

117. A speaker cannot predict whether content they publish might be perceived as "likely to cause" suicide in some unknown future recipient with unknown personal characteristics, mental health history, and life circumstances.

118. The provision therefore violates the principle of legality, which requires that criminal offences be defined with sufficient precision to enable individuals to regulate their conduct accordingly and to know what conduct is prohibited.

CHILLING EFFECT ON PROTECTED EXPRESSION

119. The phrase "likely to cause them to commit suicide" could potentially be applied to an enormous range of expression, including:

- a) News reporting on suicide, mental health, or traumatic events (war, disasters, crime, abuse);
- b) Investigative journalism exposing corruption, abuse of power, or corporate wrongdoing that may cause distress to those implicated;
- c) Documentary films or podcasts dealing with difficult or disturbing topics;
- d) Fictional works, novels, films, music, or other artistic expressions that deal with dark, tragic, or disturbing themes;
- e) Political criticism, satire, or commentary that causes emotional distress to public figures or government officials;
- f) Social media posts or blog articles discussing controversial, sensitive, or polarizing topics such as politics, religion, social justice, or current events;
- g) Academic or scholarly works on psychology, sociology, public health, suicide prevention, or related topics;

- h) Personal testimonials, memoirs, or life stories describing difficult experiences such as abuse, trauma, loss, or mental health struggles;
- i) Public health campaigns or educational materials about mental health, depression, or suicide prevention;
- j) Religious or philosophical content dealing with existential questions, suffering, death, or the meaning of life.

120. The chilling effect of this provision is immediate, severe, and widespread, even before commencement of the Amendment Act due to come into force on 4th November 2025:

- a) Journalists and media houses have become fearful of reporting on sensitive topics;
- b) Bloggers and online content creators have begun self-censoring out of fear of prosecution;
- c) Social media users are deleting posts and refraining from sharing information or opinions;
- d) Academic researchers are reconsidering projects or publications that touch on mental health or related topics;
- e) Artists and filmmakers are concerned that their work could expose them to criminal liability;
- f) Mental health advocates and suicide prevention organizations are uncertain about whether their educational materials could be misinterpreted as prohibited content.

DISPROPORTIONATE PENALTIES

121. The penalties for violation of Section 27, **a fine not exceeding KES 20,000,000 or imprisonment for up to ten (10) years, or both**, are grossly disproportionate when applied to speech offences based on vague and subjective standards.

122. These draconian penalties are likely to be weaponized against:

- a) Political opposition, activists, and critics of government;
- b) Journalists and media houses engaged in investigative reporting or critical coverage;
- c) Civil society organizations advocating for human rights, social justice, or government accountability;
- d) Ordinary citizens expressing opinions or sharing information online.

123. The threat of such severe punishment creates a climate of fear that stifles democratic discourse and undermines the marketplace of ideas essential to a free society.

IMMEDIATE HARM AND IMPLEMENTATION

124. Even before commencement of the Amendment Act, the Petitioners and the communities they serve have suffered and continue to suffer immediate and irreparable harm.

125. The 3rd Petitioner (BAKE) and its members have been directly affected:

- a) Several members have received informal warnings or threats from authorities related to their online content;
- b) A number of members have taken down articles, blog posts, or videos out of fear of prosecution or website shutdown;
- c) Members are engaging in widespread self-censorship, avoiding topics they consider sensitive or potentially controversial;
- d) The fear and uncertainty has paralyzed online expression among the digital content creation community;
- e) Members are unsure what content is permissible under the vague provisions and what might expose them to criminal liability or website shutdown;
- f) Some members are considering ceasing their online activities altogether or relocating their platforms outside Kenya.

126. The 1st and 2nd Petitioners and other civil society organizations have been affected:

- a) Their ability to use online platforms to advocate for human rights, democratic governance, and social justice has been severely constrained;
- b) Their work in promoting freedom of expression, digital rights, and access to information has been directly undermined;
- c) The organizations they work with and support are fearful of producing content that might be deemed to violate the vague provisions;
- d) Their advocacy campaigns, public education initiatives, and research projects have been chilled by the threat of arbitrary enforcement.

127. The general public and users of online platforms in Kenya have been harmed:
- a) Access to diverse sources of information has been threatened by the power to shut down websites;
 - b) The free flow of information necessary for democratic participation, government accountability, and informed decision-making has been chilled;
 - c) Online discourse on matters of public interest has been severely constrained by fear of arbitrary enforcement;
 - d) The vibrant digital ecosystem that has flourished in Kenya—including bloggers, online journalists, digital activists, content creators, and innovative online platforms—is under existential threat;
 - e) Kenya's reputation as a regional leader in digital innovation, technology entrepreneurship, and online freedom is being irreparably damaged.
128. The Communications Authority of Kenya (3rd Respondent) has publicly indicated its readiness to implement Section 6(1)(ja) and has already issued informal warnings to several websites.
129. The National Police Service (under the 4th Respondent) has indicated that it will investigate and prosecute offences under Section 27 as amended.
130. There is credible information that the Respondents are developing implementation guidelines and procedures for enforcing the impugned provisions, further confirming the immediacy of the threat to fundamental rights.

E. NATURE OF VIOLATIONS AND CONSTITUTIONAL QUESTIONS

131. The Petitioners aver that the impugned provisions—Section 3 and Section 4 of the Computer Misuse and Cybercrimes (Amendment) Act, 2025—violate multiple provisions of the Constitution and raise profound constitutional questions.

VIOLATION OF ARTICLE 2 - SUPREMACY OF THE CONSTITUTION

132. Article 2(1) and (2) establish the supremacy of the Constitution and provide that any law inconsistent with the Constitution is void to the extent of the inconsistency.

133. The impugned provisions are inconsistent with the Constitution and are therefore void to the extent of such inconsistency, as detailed in the violations set out below.

VIOLATION OF ARTICLE 3 - DEFENCE OF THE CONSTITUTION

134. Article 3(1) imposes an obligation on every person to respect, uphold, and defend the Constitution.

135. The Petitioners bring this action in fulfillment of their constitutional obligation to defend the Constitution against laws that violate fundamental rights and freedoms.

VIOLATION OF ARTICLE 10 - NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE

136. The impugned provisions violate the national values and principles of governance established in Article 10 by:

- a) Undermining the rule of law through vague, overbroad, and arbitrary restrictions on rights that lack clarity and predictability;
- b) Limiting democracy and participation of the people by chilling online expression, civic discourse, and digital platforms essential for democratic participation;
- c) Failing to respect human dignity by criminalizing expression based on subjective and speculative psychological impact and subjecting speakers to arbitrary censorship;
- d) Creating inequality in the application of the law due to the discretionary and standardless nature of enforcement, which will inevitably result in discriminatory application against marginalized or disfavored groups;
- e) Violating fundamental human rights to freedom of expression, media freedom, and access to information that are essential to Kenya's democratic state;
- f) Concentrating censorship powers in administrative rather than judicial authorities, thereby undermining good governance, transparency, and accountability and violating the separation of powers.

VIOLATION OF ARTICLES 19, 20, AND 21 - THE BILL OF RIGHTS

137. The impugned provisions undermine the Bill of Rights, which Article 19 establishes as an integral part of Kenya's democratic state and the framework for social, economic, cultural, and political policies.

138. The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings. The impugned provisions defeat this purpose by restricting fundamental freedoms in a manner that is neither necessary nor proportionate and that fails to respect human dignity.

139. Article 20(2) requires that every person enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom. The impugned provisions do not allow for such enjoyment but instead impose sweeping and disproportionate restrictions.

140. Article 21 places a fundamental duty on the State and every State organ to observe, respect, protect, promote, and fulfil the rights and fundamental freedoms in the Bill of Rights. Instead of fulfilling this duty, the State has enacted legislation that violates and threatens multiple rights and freedoms.

VIOLATION OF ARTICLE 24 - LIMITATION OF RIGHTS AND FUNDAMENTAL FREEDOMS

141. Article 24 sets out the constitutional thresholds that must be met before rights and fundamental freedoms in the Bill of Rights can be limited.

142. The impugned provisions fail the Article 24 test in multiple respects:

NOT REASONABLE OR JUSTIFIABLE IN AN OPEN AND DEMOCRATIC SOCIETY

143. The provisions are not reasonable or justifiable in an open and democratic society based on human dignity, equality, and freedom because:

- a) They use vague and overbroad language that criminalizes and censors vast categories of legitimate expression;
- b) They lack procedural safeguards necessary to prevent arbitrary and discriminatory enforcement;
- c) They vest censorship powers in administrative rather than judicial authorities;
- d) They operate as prior restraints on expression without meeting the stringent requirements that apply to such limitations;
- e) They have a severe chilling effect on freedom of expression that extends far beyond any legitimate regulatory interest.

FAILURE TO TAKE INTO ACCOUNT RELEVANT FACTORS

144. The impugned provisions fail to take into account:

- a) The fundamental nature of the rights to freedom of expression, media freedom, and access to information, which are essential to individual dignity, democratic governance, government accountability, and social and economic development;
- b) The importance of protecting unpopular, controversial, and dissenting expression, not just mainstream or agreeable speech;
- c) The severe chilling effect that vague criminal offences and arbitrary censorship powers have on the exercise of fundamental rights;
- d) The availability of less restrictive means to achieve any legitimate purposes;
- e) The need for judicial oversight when fundamental rights are restricted.

NOT NARROWLY TAILORED OR PROPORTIONATE

145. The provisions are not narrowly tailored or proportionate to any legitimate purpose because:

- a) They use sweeping, vague, and overbroad language that captures far more expression than necessary to address any legitimate harm;
- b) They impose draconian penalties (up to KES 20 million fine and/or 10 years imprisonment) for speech offences based on vague and subjective standards;
- c) They allow for complete shutdown of websites rather than targeted removal of specific unlawful content;
- d) They do not require consideration of less restrictive alternatives;
- e) They do not provide for graduated or proportionate responses tailored to the nature and severity of any alleged harm.

NOT THE LEAST RESTRICTIVE MEANS

146. The provisions are not the least restrictive means to achieve any purported objective because:

- a) Existing laws including the Penal Code, the Sexual Offences Act, the Children Act, the Prevention of Terrorism Act, and the original Computer Misuse and Cybercrimes Act, already provide mechanisms to address genuinely harmful online content;
- b) Less restrictive alternatives such as notice-and-takedown procedures for specific unlawful content, judicial orders for content removal, and prosecution of specific criminal offences are available but were not adopted;

- c) The provisions opt for the most drastic forms of restriction—complete website shutdown and sweeping criminal offences—rather than graduated or targeted measures.

FAILURE TO COMPLY WITH ARTICLE 24(2)

147. Article 24(2) provides that a provision in legislation limiting a right or fundamental freedom is not valid unless the legislation specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation.

148. While the Amendment Act may express an intention to limit rights, it does not clearly and specifically identify the nature and extent of the limitation because:

- d) The vague and overbroad language does not provide clarity about what expression is prohibited or the scope of the restriction;
- e) The lack of definitions, standards, and procedural safeguards makes it impossible to determine the boundaries of permissible expression;
- f) The provisions grant standardless discretion to administrative authorities to determine the extent of limitations on a case-by-case basis.

149. Article 24(2)(b) provides that a provision in legislation shall not be construed as limiting a right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation.

150. The impugned provisions are not clear and specific about the rights to be limited or the nature and extent of the limitation, and therefore cannot be construed as valid limitations under Article 24.

DEROGATION FROM CORE OR ESSENTIAL CONTENT

151. Article 24(2)(c) provides that a provision in legislation shall not limit a right or fundamental freedom so far as to derogate from its core or essential content.

152. The impugned provisions derogate from the core and essential content of freedom of expression and access to information by:

- a) Creating mechanisms for arbitrary prior restraint and censorship of online expression;

- b) Criminalizing vast categories of legitimate expression based on vague and subjective standards;
- c) Vesting censorship powers in administrative authorities rather than requiring judicial oversight;
- d) Failing to protect the core functions of freedom of expression including political speech, journalism, artistic expression, and public discourse on matters of public interest;
- e) Shutting down entire websites rather than addressing specific unlawful content;
- f) Creating such a severe chilling effect that the practical exercise of freedom of expression is eviscerated.

153. The core and essential content of freedom of expression includes:

- a) The right to criticize government, public officials, and public institutions;
- b) The right to engage in political speech and participate in democratic discourse;
- c) The right to practice journalism and disseminate information of public interest;
- d) The right to artistic and creative expression;
- e) The right to academic freedom and scholarly inquiry;
- f) The right to receive and access information;
- g) Protection from arbitrary prior restraint and censorship.

154. By allowing administrative authorities to shut down websites without judicial oversight and by criminalizing expression based on speculative psychological impact, the impugned provisions eviscerate these core protections.

FAILURE TO JUSTIFY LIMITATION

155. Article 24(3) provides that the State or a person seeking to justify a particular limitation shall demonstrate to the court that the requirements of Article 24 have been satisfied.

156. The Respondents cannot and will not be able to demonstrate that the impugned provisions satisfy the requirements of Article 24.

157. The Respondents have not provided any evidence or justification showing:

- a) A pressing social need for the impugned provisions;

- b) That existing laws are inadequate to address legitimate concerns;
- c) That the provisions are narrowly tailored or proportionate;
- d) That less restrictive means are unavailable;
- e) That the benefits of the limitations outweigh the harms to fundamental rights.

VIOLATION OF ARTICLE 27 - EQUALITY AND FREEDOM FROM DISCRIMINATION

158. Article 27(1) provides that every person is equal before the law and has the right to equal protection and equal benefit of the law.

159. The vague and overbroad nature of the impugned provisions will inevitably result in arbitrary and discriminatory enforcement.

160. When laws lack clear standards and grant wide discretion to enforcement authorities, they are applied selectively and discriminatorily against:

- a) Critics of government and political opponents;
- b) Marginalized communities and minority groups;
- c) Human rights defenders and civil society activists;
- d) Independent journalists and media houses;
- e) Persons based on their political opinions, religion, ethnicity, or other protected characteristics.

161. The lack of objective criteria and procedural safeguards in the impugned provisions creates both the opportunity and the incentive for discriminatory enforcement.

VIOLATION OF ARTICLE 28 - HUMAN DIGNITY

162. Article 28 provides that every person has inherent dignity and the right to have that dignity respected and protected.

163. The impugned provisions violate human dignity by:

- a) Subjecting individuals to arbitrary and disproportionate criminal penalties for expression;
- b) Creating a climate of fear and self-censorship that inhibits the free development of personality, identity, and self-expression;

- c) Failing to respect the autonomy and agency of individuals to express themselves freely and to participate in democratic discourse;
- d) Treating speakers as mere subjects of state control and censorship rather than rights-bearing citizens with inherent dignity in a democratic society;
- e) Criminalizing expression based on subjective reactions of others rather than respecting the dignity and moral agency of speakers.

VIOLATION OF ARTICLE 31 - PRIVACY

164. Article 31(c) provides that every person has the right to privacy, including the right not to have information relating to their family or private affairs unnecessarily required or revealed.
165. The enforcement of the vague provisions in the Amendment Act will inevitably involve:
- a) Invasive investigations into individuals' private communications, online activities, and personal information;
 - b) Surveillance of digital communications and online behavior;
 - c) Disclosure of private communications and information in criminal proceedings;
 - d) Compelled production of communications data, browsing history, and other personal information.
166. The lack of clear standards and procedural safeguards increases the risk of arbitrary and disproportionate intrusions into privacy.

VIOLATION OF ARTICLE 33 - FREEDOM OF EXPRESSION

167. Article 33(1) provides that every person has the right to freedom of expression, which includes:
- a) Freedom to seek, receive or impart information or ideas;
 - b) Freedom of artistic creativity; and
 - c) Academic freedom and freedom of scientific research.
168. Freedom of expression is a foundational right in a democratic society. It is essential for:
- a) Individual self-fulfillment, personal development, and human dignity;
 - b) Democratic governance, political participation, and government accountability;

- c) The marketplace of ideas and the search for truth through free and open debate;
- d) Social and cultural development, artistic expression, and innovation;
- e) Economic development and the digital economy.

169. Freedom of expression protects not only popular, mainstream, or agreeable expression, but also unpopular, controversial, offensive, or dissenting expression, subject only to the narrow limitations in Article 33(2).

170. Article 33 (2) provides that the right to freedom of expression does not extend to:

- a) Propaganda for war;
- b) Incitement to violence;
- c) Hate speech; or
- d) 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(5).

171. These limitations are narrow, specific, exhaustive, and represent the constitutional judgment about where the line should be drawn between protected and unprotected expression.

172. The impugned provisions go far beyond the limitations in Article 33(2) and restrict a wide range of expression that is constitutionally protected.

SECTION 6(1)(JA) VIOLATES ARTICLE 33

173. Section 6(1)(ja) of the Principal Act, as amended by Section 3 of the Amendment Act, violates Article 33 in the following ways:

174. It empowers administrative authorities to shut down websites and applications based on vague and overbroad grounds ("unlawful activities," "inappropriate sexual content of a minor," "terrorism," "religious extremism," "cultism") that:

- a) Extend far beyond the narrow limitations on expression specified in Article 33(2);
- b) Capture vast categories of constitutionally protected expression;
- c) Are so vague that their application cannot be predicted;
- d) Grant standardless discretion to administrative authorities.

175. It operates as a prior restraint on expression, the most severe form of limitation, without meeting the stringent procedural safeguards required under constitutional and international human rights law, including:
- a) Prior judicial authorization;
 - b) Clear and narrow grounds for restriction;
 - c) Notice and opportunity to be heard before the restraint is imposed;
 - d) Availability of prompt judicial review;
 - e) A compelling showing of imminent and grave harm that cannot be prevented by less restrictive means.
176. It fails to require judicial authorization before restricting expression, thereby vesting in administrative authorities the power to make legal and factual determinations and to issue binding orders restricting fundamental rights, functions that are inherently judicial.
177. It creates a severe chilling effect that deters individuals and organizations from exercising their right to freedom of expression:
- a) Website operators, bloggers, and online content creators cannot predict what content might be deemed to "promote" the vaguely defined prohibited activities;
 - b) The threat of complete website shutdown—destroying an entire platform and all its content—is such a draconian sanction that speakers will self-censor rather than risk such a severe consequence;
 - c) The lack of procedural safeguards means that websites can be shut down arbitrarily without notice, hearing, or judicial review, creating pervasive fear and uncertainty.
178. It restricts access to information and ideas in violation of Article 33(1)(a) by:
- a) Rendering websites and applications inaccessible to users in Kenya;
 - b) Preventing citizens from receiving information through online platforms;
 - c) Undermining the marketplace of ideas and the free flow of information essential to a democratic society.
179. It does not serve any compelling governmental interest that cannot be achieved through less restrictive means, as:

- a) Existing laws adequately address genuinely harmful content such as child sexual abuse material, incitement to violence, terrorist content, and defamation;
- b) Less restrictive alternatives such as judicial orders for removal of specific unlawful content, prosecution of specific criminal offences, and notice-and-takedown procedures are available;
- c) Complete shutdown of websites is a grossly disproportionate response that destroys lawful expression along with any allegedly unlawful content.

SECTION 27(1)(B) AS AMENDED VIOLATES ARTICLE 33

180. Section 27(1)(b) of the Principal Act, as amended by Section 4 of the Amendment Act, violates Article 33 in the following ways:

181. It criminalizes expression based on speculative psychological impact ("likely to cause them to commit suicide") rather than the narrow grounds in Article 33(2):

- a) Article 33(2) does not authorize criminalization of expression based on potential psychological harm or emotional impact;
- b) The provision extends criminal liability far beyond incitement to violence, hate speech, or other categories excluded from constitutional protection;
- c) It criminalizes expression that may cause distress, discomfort, or negative emotions without requiring any showing of intent to cause harm or any actual harm.

182. It creates vague and overbroad standards that capture vast categories of legitimate and constitutionally protected expression:

- a) News reporting on tragedy, trauma, mental health, or difficult social issues;
- b) Investigative journalism exposing corruption, abuse, or wrongdoing;
- c) Documentary films or works of journalism dealing with difficult topics;
- d) Fictional works, artistic expression, or creative works dealing with dark themes;
- e) Political criticism or commentary that causes emotional distress;
- f) Social media posts or blog articles on controversial topics;
- g) Academic or scholarly works on psychology, mental health, or related fields;
- h) Personal testimonials or memoirs describing difficult life experiences;
- i) Public health campaigns or educational materials on mental health.

183. It imposes grossly disproportionate penalties (up to KES 20 million fine and/or 10 years imprisonment) that chill expression far beyond any legitimate regulatory interest:
- a) The threat of such severe punishment deters not only harmful speech but also vast categories of legitimate expression;
 - b) The penalties are more severe than those for many violent crimes, reflecting a profound misalignment of priorities;
 - c) The possibility of financial ruin or a decade in prison for speech offences is fundamentally incompatible with freedom of expression in a democratic society.
184. It fails to distinguish between harmful speech and protected expression:
- a) It does not require intent to cause harm;
 - b) It does not require actual harm;
 - c) It does not provide defenses for good faith reporting, public interest expression, or truth;
 - d) It criminalizes based solely on potential psychological impact without regard to the nature or value of the expression.
185. It has an immediate and severe chilling effect on freedom of expression:
- a) Since the Amendment Act came into force, journalists, bloggers, content creators, and ordinary citizens have engaged in widespread self-censorship;
 - b) The fear of criminal prosecution under vague standards has paralyzed online expression and discourse;
 - c) The chilling effect extends far beyond any category of expression that could legitimately be prohibited;
 - d) The practical exercise of freedom of expression has been eviscerated even though the vast majority of chilled expression is constitutionally protected.

VIOLATION OF ARTICLE 34 - FREEDOM AND INDEPENDENCE OF MEDIA

186. Article 34(1) provides that freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33(2).
187. Article 34(2) provides that the State shall not:

- a) Exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or
- b) Penalize any person for any opinion or view or the content of any broadcast, publication or dissemination.

188. Article 34(3) provides that broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that are necessary to regulate the airwaves and other forms of signal distribution, and are independent of control by State or State organs.

189. The impugned provisions violate Article 34 in the following ways:

190. Section 6(1)(ja) enables the State to exercise control over and interfere with electronic media, online publications, and digital platforms:

- a) The power to shut down websites and applications is a direct and severe form of state control and interference;
- b) The threat of shutdown creates a climate of fear that enables indirect control through self-censorship;
- c) Administrative authorities can selectively shut down media outlets they disfavor, thereby exercising editorial control.

191. Section 27 as amended penalizes persons for the content of their online publications:

- a) Criminal prosecution under Section 27 is a form of penalization for content;
- b) The vague standards allow for selective prosecution of media based on their editorial choices and coverage;
- c) The threat of prosecution creates a chilling effect that amounts to indirect penalization.

192. The provisions subject online media to content-based restrictions that go beyond the narrow limitations in Article 33(2) and Article 34(1).

193. The provisions undermine the independence of online and electronic media by:

- a) Subjecting them to arbitrary administrative control;
- b) Creating mechanisms for state censorship without judicial oversight;
- c) Empowering government authorities to determine what content is permissible;
- d) Chilling investigative journalism and critical coverage of government and public institutions.

194. Online media and digital platforms are a vital and growing component of Kenya's media ecosystem:

- a) Many Kenyans, especially younger generations, rely primarily on online sources for news and information;
- b) Online media has democratized access to information and enabled diverse voices;
- c) Digital platforms have facilitated innovative forms of journalism, citizen journalism, and participatory media;
- d) The impugned provisions directly threaten this vibrant and essential media ecosystem.

VIOLATION OF ARTICLE 35 - ACCESS TO INFORMATION

195. Article 35(1) provides that every citizen has the right of access to:

- a) Information held by the State; and
- b) Information held by another person and required for the exercise or protection of any right or fundamental freedom.

196. Article 35(3) provides that the State shall publish and publicize any important information affecting the nation.

197. The right to access information is essential for:

- a) The exercise of other rights, particularly freedom of expression, political participation, and accountability;
- b) Making informed decisions as citizens in a democratic society;
- c) Holding government accountable and ensuring transparency;
- d) Participating effectively in economic, social, cultural, and political life;
- e) Personal development and the realization of human potential.

198. The impugned provisions violate Article 35 in the following ways:

199. 193. Section 6(1)(ja) directly interferes with citizens' access to information by:
- a) Rendering websites and online platforms inaccessible;
 - b) Depriving citizens of sources of news, information, analysis, and diverse perspectives;
 - c) Shutting down entire platforms rather than removing specific unlawful content, thereby denying access to all information on the platform;
 - d) Creating uncertainty about what information will remain accessible, deterring reliance on online sources.
200. Many Kenyans rely on online platforms as their primary or exclusive source of news and information:
- a) Internet penetration in Kenya exceeds 80% and is growing rapidly;
 - b) Mobile internet access has democratized access to information for millions of Kenyans;
 - c) Online platforms provide access to diverse, alternative, and independent sources of information not available in traditional media;
 - d) Shutting down websites denies access to information necessary for the exercise of rights and participation in democratic life.
201. The provisions restrict access to information held by private parties and disseminated through online media:
- a) Much information required for the exercise or protection of rights is held by non-state actors and disseminated online;
 - b) The impugned provisions enable the State to restrict access to such information by shutting down the platforms that host or disseminate it;
 - c) This violates Article 35(1)(b) which guarantees access to information held by another person where required for the exercise or protection of rights.
202. The chilling effect created by the provisions undermines the State's duty to publish and publicize important information:
- a) Fear of prosecution or website shutdown deters individuals and organizations from publishing information of public interest;
 - b) Government agencies and public officials may exploit the provisions to suppress information that reflects negatively on them;

- c) The provisions create disincentives for transparency and information sharing, contrary to Article 35(3).

VIOLATION OF ARTICLE 47 - FAIR ADMINISTRATIVE ACTION

- 203. Article 47(1) provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- 204. Article 47(2) provides that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
- 205. Article 47(3) provides that every person has the right to judicial review of administrative action.
- 206. Section 6(1)(ja) of the Principal Act, as amended, authorizes administrative action (the issuance of a directive to render a website or application inaccessible) that directly and severely affects fundamental rights.
- 207. The provision violates Article 47 by failing to provide for:
 - a) Notice to the affected party before the action is taken;
 - b) An opportunity for the affected party to be heard before the decision is made;
 - c) Clear standards, criteria, and guidelines governing the exercise of the power;
 - d) Written reasons for the decision;
 - e) A right of appeal or review before an independent tribunal;
 - f) Any procedural safeguards to ensure fairness and legality.
- 208. The power to shut down websites without prior notice, hearing, or judicial review violates the most basic principles of procedural fairness and administrative justice.
- 209. Administrative actions that restrict fundamental rights must meet heightened standards of procedural fairness, including:
 - a) Clear and objective criteria for the exercise of the power;
 - b) Notice to affected parties;
 - c) An opportunity to be heard before the decision is made;
 - d) A reasoned decision based on evidence;

- e) Availability of prompt judicial review;
- f) The decision being made by an independent and impartial decision-maker.

210. The impugned provision meets none of these standards and therefore violates Article 47.

VIOLATION OF ARTICLE 50 - FAIR HEARING

211. Article 50(1) provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

212. The determination of whether a website "promotes" prohibited content and whether it should be shut down involves questions of law and fact that can be resolved by the application of law.

213. Such determinations should therefore be made by a court or independent tribunal after a fair and public hearing, not by an administrative committee without hearing or oversight.

214. Article 50(2) provides that every accused person has the right to a fair trial, which includes the right:

- a) to be presumed innocent until the contrary is proved;
- b) to be informed of the charge, with sufficient detail to answer it;
- c) to have adequate time and facilities to prepare a defence; and
- d) other fair trial rights.

215. Article 50(2)(b) requires that criminal charges be stated with sufficient detail to enable the accused to answer them, which requires that criminal offences be clearly and precisely defined.

216. The vague and overbroad provisions of Section 27 as amended violate Article 50(2)(b) by:

- a) Failing to provide sufficient detail about what conduct is prohibited;
- b) Making it impossible for accused persons to know what they must defend against;

- c) Leaving critical elements of the offence undefined and subject to subjective interpretation;
- d) Criminalizing based on speculative psychological impact that cannot be objectively assessed or rebutted.

217. The principle of legality, which is a fundamental component of the right to a fair trial, requires that criminal offences be defined with sufficient clarity and precision to:

- a) Enable individuals to know what conduct is prohibited and to regulate their behavior accordingly;
- b) Provide clear guidance to law enforcement and prosecutors about what conduct violates the law;
- c) Limit the discretion of enforcement authorities to prevent arbitrary or discriminatory application;
- d) Enable accused persons to mount a defense.

218. The impugned provisions fail to meet the principle of legality and therefore violate the right to a fair hearing.

219. Criminalizing expression based on whether it is "likely to cause them to commit suicide" creates insurmountable difficulties for the defense:

- a) How can an accused rebut a claim that their expression was "likely" to cause suicide when likelihood is inherently speculative?
- b) What evidence can be presented to show that the likelihood did not exist when the assessment depends on unknowable future events and the subjective reactions of unknown individuals?
- c) The provision effectively shifts the burden to the accused to prove that their expression was not likely to cause suicide, reversing the presumption of innocence.

VIOLATION OF ARTICLE 159 - JUDICIAL AUTHORITY

220. Article 159(1) provides that judicial authority is derived from the people and vests in, and shall be exercised by, courts and tribunals established by or under this Constitution.

221. Article 159(2) provides that in exercising judicial authority, courts and tribunals shall be guided by the following principles:
- a) justice shall be done to all, irrespective of status;
 - b) justice shall not be delayed;
 - c) alternative forms of dispute resolution shall be promoted;
 - d) justice shall be administered without undue regard to procedural technicalities; and
 - e) the purpose and principles of this Constitution shall be protected and promoted.
222. Section 6(1)(ja) of the Principal Act, as amended, usurps judicial authority by:
- a) Vesting in an administrative body (the Committee) the power to make determinations of law and fact;
 - b) Empowering an administrative body to issue binding orders restricting fundamental rights;
 - c) Authorizing an administrative body to exercise functions that are inherently judicial in nature.
223. The power to determine whether expression is unlawful, to weigh rights and interests, to assess whether limitations on rights are justified, and to order restrictions on speech are inherently judicial functions that:
- a) Require legal expertise and training;
 - b) Require independence and impartiality;
 - c) Involve the interpretation and application of constitutional rights;
 - d) Have profound consequences for fundamental freedoms;
 - e) Cannot be delegated to administrative authorities.
224. Under Kenya's constitutional structure, only courts have the authority to:
- a) Interpret the Constitution and determine the constitutionality of conduct;
 - b) Make binding determinations about the scope and application of fundamental rights;
 - c) Issue orders restricting constitutional rights after finding that the strict requirements of Article 24 are met;
 - d) Balance competing rights and interests in a manner that respects the Bill of Rights.

225. Allowing administrative bodies to exercise these powers without judicial oversight:
- a) Violates the separation of powers between the Executive and the Judiciary;
 - b) Undermines the independence of the Judiciary;
 - c) Deprives individuals of the constitutional right to have disputes resolved by courts;
 - d) Creates a parallel system of restriction of rights outside the constitutional framework.
226. The Committee is an administrative body within the Executive:
- e) Its members are appointed by and serve at the pleasure of Executive authorities;
 - f) It is not independent or impartial;
 - g) It does not have the legal expertise or training required for judicial determinations;
 - h) It is not subject to the constitutional principles and protections that govern the Judiciary;
 - i) It is not accountable to the public in the way that courts are.
227. Vesting censorship powers in such a body violates the fundamental constitutional principle that restrictions on rights must be imposed by independent and impartial judicial authorities, not by Executive bodies accountable to government.

VIOLATION OF ARTICLE 160 - INDEPENDENCE OF THE JUDICIARY

228. Article 160(1) provides that in the exercise of judicial authority, the Judiciary, as constituted by Article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.
229. Article 160(2) provides that the purpose of the Judiciary is to—
- a) administer justice according to law;
 - b) facilitate dialogue and mediation in the resolution of disputes; and
 - c) promote public participation in the administration of justice.
230. Article 160(3) emphasizes the independence of the Judiciary by providing that the Judiciary shall be subject to no other control than that of the Constitution and the law.

231. Section 6(1)(ja) undermines the independence of the Judiciary by:
- a) Creating a parallel system of administrative censorship that operates outside judicial control;
 - b) Bypassing the constitutional requirement that limitations on fundamental rights be subject to judicial review;
 - c) Enabling Executive authorities to restrict rights without judicial authorization or oversight;
 - d) Reducing the Judiciary's role from gatekeeper of fundamental rights to after-the-fact reviewer (if review is available at all).
232. The power to shut down websites is a form of prior restraint that, under constitutional and international human rights law, requires prior judicial authorization:
- a) Prior restraints are presumptively unconstitutional
 - b) They can be imposed only in the most exceptional circumstances;
 - c) They must be authorized by a court after a hearing on notice;
 - d) The party seeking the restraint must meet a heavy burden of showing imminent and irreparable harm that cannot be prevented by less restrictive means;
 - e) The restraint must be narrowly tailored and temporary, subject to prompt judicial review.
233. By vesting the power to impose prior restraints in an administrative committee rather than the Judiciary, the Amendment Act:
- a) Violates the constitutional principle that only courts may restrict fundamental rights;
 - b) Undermines the Judiciary's role as the guardian of the Bill of Rights;
 - c) Enables the Executive to bypass judicial oversight and accountability;
 - d) Creates a regime of censorship that is fundamentally incompatible with judicial independence and the rule of law.
234. The independence of the Judiciary is essential to the protection of fundamental rights and the rule of law:
- a) Courts are independent of political influence and electoral pressure;
 - b) Judges are trained in constitutional law and human rights;

- c) Judicial proceedings are transparent, reasoned, and subject to appeal;
- d) Courts are accountable to the Constitution and the law, not to government;
- e) Only independent courts can credibly safeguard rights against Executive overreach.

235. By removing the Judiciary from its constitutional role in protecting freedom of expression and instead empowering administrative bodies to restrict expression, the impugned provision violates Article 160 and undermines the foundation of judicial independence.

VIOLATION OF ARTICLE 232 - VALUES AND PRINCIPLES OF PUBLIC SERVICE

236. Article 232(1) establishes the values and principles of public service, which include:

- a) high standards of professional ethics;
- b) efficient, effective and economic use of resources;
- c) responsive, prompt, effective, impartial, equitable and fair provision of services;
- d) involvement of the people in the process of policy making;
- e) accountability for administrative acts;
- f) transparency and provision to the public of timely, accurate information;
- g) fair competition and merit as the basis of appointments and promotions;
- h) representation of Kenya's diverse communities; and
- i) affording adequate and equal opportunities.

237. Article 232(2) provides that the values and principles apply to public service in all State organs in both levels of government and all State corporations.

238. The impugned provisions violate the values and principles of public service by:

- a) Failing to involve the people in the process of policy making. The Petitioners aver that the Amendment was rushed through Parliament without meaningful public participation or consultation with stakeholders whose rights would be affected;
- b) Lacking accountability for administrative acts. Section 6(1)(ja) does not require the Committee to provide reasons, allow appeals, or be accountable for its decisions to shut down websites;

- c) Failing to ensure transparency and provision of accurate information as the process of shutting down websites under Section 6(1)(ja) is opaque, there is no requirement to publish directives or decisions, and the public has no way to know why websites have been taken down;
- d) Creating arbitrary and discretionary powers that undermine impartiality, equity, and fairness—the lack of clear standards means that decisions about whether to shut down websites will be influenced by political considerations, favoritism, and bias rather than objective legal criteria.

239. Article 232(1)(d) requires "involvement of the people in the process of policy making," yet the Amendment Act was:

- a) Rushed through Parliament with minimal time for public input;
- b) Enacted without meaningful consultation with affected communities including digital rights organizations, media groups, civil society, and internet users;
- c) Implemented immediately without regulations, guidelines, or stakeholder engagement on implementation.

240. Article 232(1)(e) requires "accountability for administrative acts," yet Section 6(1)(ja):

- a) Does not require the Committee to provide reasons for its decisions;
- b) Does not establish any appeal mechanism or accountability forum;
- c) Does not provide for judicial review before the censorship is implemented;
- d) Creates no consequences for abuse or misuse of the power.

241. Article 232(1)(f) requires "transparency and provision to the public of timely, accurate information," yet Section 6(1)(ja):

- a) Does not require publication of directives or decisions;
- b) Does not require transparency about the criteria or evidence used to justify website shutdowns;
- c) Operates in secrecy without public accountability;
- d) Undermines rather than promotes the provision of accurate information by shutting down information sources.

VIOLATION OF ARTICLE 259 - INTERPRETATION OF THE CONSTITUTION

242. Article 259(1) provides that this Constitution shall be interpreted in a manner that:

- a) promotes its purposes, values and principles;
- b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- c) permits the development of the law; and
- d) contributes to good governance.

243. Any interpretation or application of the impugned provisions, that restricts fundamental rights must be read down or struck down to ensure consistency with the Constitution's purposes, values, and principles.

244. However, the impugned provisions cannot be interpreted in a manner consistent with the Constitution because:

- a) They are fundamentally and irredeemably vague, overbroad, and violative of multiple constitutional rights;
- b) No reasonable interpretation can cure the fatal defects in the provisions;
- c) Even a narrowing interpretation cannot address the fundamental problem that the provisions vest censorship powers in administrative rather than judicial authorities;
- d) The provisions are so sweeping that any attempt to interpret them narrowly would require rewriting them, which is not within the court's interpretive power.

245. The impugned provisions do not advance the rule of law but undermine it by:

- a) Creating vague and unpredictable restrictions on rights;
- b) Vesting standardless discretion in administrative authorities;
- c) Enabling arbitrary and discriminatory enforcement;
- d) Bypassing judicial oversight and accountability.

246. The impugned provisions do not advance human rights and fundamental freedoms but violate them by:

- a) Restricting freedom of expression far beyond constitutional limits;
- b) Chilling media freedom and access to information;
- c) Denying procedural fairness and fair hearing rights;
- d) Undermining human dignity, equality, and privacy.

247. The impugned provisions do not contribute to good governance but undermine it by:

- a) Enabling censorship of criticism and dissent;
- b) Suppressing investigative journalism and accountability reporting;
- c) Concentrating power in Executive authorities without checks and balances;
- d) Creating a climate of fear that inhibits democratic participation.

248. The Court is therefore duty-bound to strike down the impugned provisions as unconstitutional and inconsistent with the Constitution's purposes, values, and principles.

VIOLATION OF KENYA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

249. Article 2(5) of the Constitution provides that the general rules of international law shall form part of the law of Kenya.

250. Article 2(6) provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

251. Kenya is a party to numerous international and regional human rights instruments that guarantee freedom of expression and access to information, including:

- a) The Universal Declaration of Human Rights (UDHR);
- b) The International Covenant on Civil and Political Rights (ICCPR), ratified by Kenya in 1972;
- c) The African Charter on Human and Peoples' Rights (ACHPR), ratified by Kenya in 1992.

252. Article 19 of the UDHR provides:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

253. Article 19 of the ICCPR provides:

"1. Everyone shall have the right to hold opinions without interference."

2. 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.

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."*

254. Article 9 of the ACHPR provides:

"1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law."

255. The UN Human Rights Committee, which monitors implementation of the ICCPR, has emphasized in its General Comment No. 34 on Article 19 that:

- a) Any restriction on freedom of expression must be provided by law, which must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public;
- b) A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution;
- c) Laws restricting freedom of expression must conform to the strict tests of necessity and proportionality and must be applied only for those purposes for which they were prescribed;
- d) States parties should not prohibit criticism of institutions, such as the army or the administration;
- e) All public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition;
- f) Laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned;

- g) States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases;
- h) 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;
- i) The penalization of a media outlet, publishers or journalists solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.

256. The African Commission on Human and Peoples' Rights has adopted the Declaration of Principles on Freedom of Expression in Africa (2002), which affirms that:

- a) Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, is a fundamental and inalienable human right and an indispensable component of democracy;
- b) No one shall be subject to arbitrary interference with his or her freedom of expression;
- c) Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and demonstrably justified in a democratic society;
- d) Freedom of expression places positive obligations on States to promote and foster a plurality of media outlets;
- e) Any law restricting freedom of expression must be precise and must ensure that arbitrary or disproportionate interference with the right is not permissible;
- f) States should ensure that their laws relating to defamation and obscenity do not inhibit criticism of public officials and debate about matters of public interest.

257. The impugned provisions violate Kenya's international human rights obligations by:

- a) Failing to provide laws that are sufficiently precise and clear—the vague and overbroad language does not enable individuals to regulate their conduct or know what is prohibited;

- b) Conferring unfettered discretion on administrative authorities—Section 6(1)(ja) provides no standards or criteria to limit discretion in deciding whether to shut down websites;
- c) Failing to meet the tests of necessity and proportionality—the provisions are not narrowly tailored, not the least restrictive means, and impose grossly disproportionate penalties;
- d) Prohibiting criticism of government and public institutions—the vague provisions can be and likely will be used to suppress criticism, dissent, and accountability journalism;
- e) Imposing criminal penalties for speech offenses—Section 27 criminalizes expression based on vague standards, contrary to international standards calling for decriminalization of speech offenses;
- f) Penalizing media for critical coverage—the provisions enable selective prosecution and website shutdown based on content that is critical of government;
- g) Failing to protect a free, uncensored, and unhindered press—the provisions create mechanisms for censorship and prior restraint that are antithetical to media freedom.

258. By enacting legislation that violates Kenya's international human rights obligations, the State has breached its duties under Article 2(5) and (6) of the Constitution to respect and incorporate international law.

F. RELIEFS SOUGHT

259. **WHEREFORE**, the Petitioners pray that this Honourable Court be pleased to grant the following reliefs:

DECLARATIONS

1. A **DECLARATION** that Section 3 of the Computer Misuse and Cybercrimes (Amendment) Act, 2025, which amends Section 6 of the Computer Misuse and Cybercrimes Act, 2018 (Cap. 79C) by inserting paragraph (ja), is unconstitutional, null, and void for:
 - a) Violating Articles 2, 3, 10, 19, 20, 21, 24, 33, 34, 35, 47, 50, 159, 160, 232, and 259 of the Constitution of Kenya, 2010;

- b) Being vague, overbroad, and lacking sufficient precision and clarity as required by the principle of legality;
- c) Vesting censorship powers in administrative authorities in violation of the separation of powers and judicial independence;
- d) Authorizing prior restraint on expression without judicial oversight in violation of freedom of expression and media freedom;
- e) Failing to provide procedural safeguards required for administrative action affecting fundamental rights;
- f) Creating a chilling effect that stifles freedom of expression and access to information;
- g) Violating Kenya's international human rights obligations.

2. A **DECLARATION** that Section 4 of the Computer Misuse and Cybercrimes (Amendment) Act, 2025, which amends Section 27(1)(b) of the Computer Misuse and Cybercrimes Act, 2018 (Cap. 79C) by inserting the words "or is likely to cause them to commit suicide," is unconstitutional, null, and void for:

- a) Violating Articles 2, 3, 10, 19, 20, 21, 24, 28, 31, 33, 34, 35, 47, 50, and 259 of the Constitution of Kenya, 2010;
- b) Being fundamentally vague, subjective, and speculative, lacking the precision and clarity required by the principle of legality;
- c) Criminalizing expression based on potential psychological impact that cannot be objectively assessed or predicted;
- d) Restricting freedom of expression far beyond the narrow limitations permitted under Article 33(2);
- e) Imposing grossly disproportionate penalties for speech offences in violation of the principle of proportionality;
- f) Creating a severe chilling effect that stifles lawful expression;
- g) Violating the right to a fair hearing by making it impossible for accused persons to know what conduct is prohibited or to mount an adequate defence;
- h) Violating Kenya's international human rights obligations.

3. A **DECLARATION** that any directive issued, website shut down, or prosecution commenced pursuant to the impugned provisions is unlawful, unconstitutional, null, and void.

4. A DECLARATION that the enactment of the Computer Misuse and Cybercrimes (Amendment) Act, 2025 without meaningful public participation and stakeholder consultation violated Article 10 and Article 232(1)(d) of the Constitution.
5. A DECLARATION that the Respondents have violated their constitutional duty under Article 21 to observe, respect, protect, promote, and fulfill the rights and fundamental freedoms in the Bill of Rights by enacting and implementing laws that violate multiple fundamental rights.

INJUNCTIONS AND PROHIBITIONS

6. A **PERMANENT INJUNCTION** prohibiting the Respondents, whether by themselves, their agents, servants, employees, or any persons acting under their direction or authority, from:
 - a) Implementing, enforcing, or giving effect to Section 3 of the Computer Misuse and Cybercrimes (Amendment) Act, 2025;
 - b) Implementing, enforcing, or giving effect to Section 6(1)(ja) of the Computer Misuse and Cybercrimes Act, 2018 as amended;
 - c) Issuing any directive to render any website or application inaccessible pursuant to Section 6(1)(ja);
 - d) Shutting down, blocking, deactivating, or otherwise interfering with the operation of any website, application, or online platform pursuant to Section 6(1)(ja);
 - e) Taking any action whatsoever to restrict, limit, or interfere with online expression or access to information based on the vague and overbroad standards in Section 6(1)(ja).
7. A **PERMANENT INJUNCTION** prohibiting the Respondents, whether by themselves, their agents, servants, employees, or any persons acting under their direction or authority, from:
 - a) Prosecuting, investigating, arresting, or charging any person under Section 27(1)(b) of the Computer Misuse and Cybercrimes Act, 2018 as amended by Section 4 of the Amendment Act;

- b) Applying or enforcing the phrase "or is likely to cause them to commit suicide" in Section 27(1)(b) in any criminal investigation or prosecution.

CONSEQUENTIAL ORDERS

- 8. AN **ORDER** directing the Respondents to immediately:
 - a) Restore access to any website, application, or online platform that has been shut down, blocked, or rendered inaccessible pursuant to Section 6(1)(ja) of the Computer Misuse and Cybercrimes Act, 2018 as amended;
 - b) Withdraw any directive issued pursuant to Section 6(1)(ja);
 - c) Discontinue any prosecution commenced under Section 27(1)(b) as amended by Section 4 of the Computer Misuse and Cybercrimes (Amendment) Act, 2025 insofar as it relies on the phrase "or is likely to cause them to commit suicide";
 - d) Expunge any criminal records arising from such prosecutions.
- 9. AN ORDER directing the 1st Respondent to publish the declarations and orders of this Court in the Kenya Gazette and at least two newspapers of national circulation within seven (7) days of the date of this judgment.
- 10. AN ORDER directing the Respondents to take all necessary steps to ensure that the impugned provisions are not implemented or enforced and that officials, agencies, and departments under their authority are informed of the Court's declarations and orders.

COSTS AND FURTHER RELIEF

- 11. The costs of this Petition.
- 12. Such further or other relief as this Honourable Court may deem just and appropriate to grant in the circumstances, including:
 - a) Structural or systemic orders to ensure compliance with the Constitution in future legislative processes affecting fundamental rights;
 - b) Orders requiring public participation and stakeholder consultation in any future legislation affecting digital rights, freedom of expression, or access to information;

- c) Orders requiring the development of clear guidelines and safeguards for any future regulation of online content or digital platforms, consistent with constitutional requirements and international human rights standards.

DATED at NAIROBI this ___30th___ day of _____October_____ 2025



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