



Joint Submission to 4th Cycle of the Universal Periodic Review of Kenya

For Consideration at the 49th Session of the UPR Working Group

Submitted on: 10 October 2024

Submitted by:

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Committee to Protect Journalists (CPJ); an NGO in Special Consultative Status with ECOSOC.

ARTICLE 19 (A19) was founded in 1987. It draws its mandate from Article 19 of the Universal Declaration of Human Rights; to promote and protect the fundamental rights of freedom of expression and access to information with a belief that the full enjoyment of these rights is vital for the realisation of other fundamental rights and freedoms. ARTICLE works globally through nine regional hubs including the ARTICLE 19 Eastern Africa hub based in Kenya.

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The Committee to Protect Journalists (CPJ) was founded in 1981 and is an independent, non-profit organisation that promotes press freedom across the world. It campaigns for the right of journalists to report the news without fear of reprisal. CPJ is made up of experts around the world, with headquarters in New York City. CPJ reports on violations in repressive countries, conflict zones, and established democracies alike.

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Executive Summary

1. ARTICLE 19 and the Committee to Protect Journalists (CPJ) welcome the opportunity to contribute to the fourth cycle of the Universal Periodic Review (UPR) of Kenya. This submission assesses Kenya's compliance with its international human rights obligations, examining progress against recommendations accepted during the third cycle of the UPR relating to the right to freedom of expression and information, and the right to freedom of peaceful assembly and association.
2. ARTICLE 19 and CPJ remain concerned about the ongoing and serious restrictions on civic space and freedom of expression in Kenya. Our research has found an overall decline in freedom of expression in the country since the last review of the Working Group in 2020.¹ This includes attempts by the government to introduce new and undue legal restrictions, as well as significant harassment and violence against protesters, journalists and human rights defenders, particularly in the context of general elections and protests.
3. Despite these negative trends, there has been limited progress in certain areas, notably with the enactment of the Data Protection Act of 2019, the Access to Information General Regulations of 2023 and the implementation of the Public Benefits Organisation Act 2013 (PBO Act).

Legal Framework on Free Expression

4. During its previous review, Kenya accepted recommendations to uphold the right to freedom of expression, including for media organisations and human rights defenders in accordance with international law.²

Constitution

5. Article 33 of the Constitution of Kenya 2010 gives strong protection to the right to freedom of expression, subject to the exclusions of Article 33(2), with Article 34 further protecting freedom of the media and Article 35 protecting the right of access to information. Article 2 of the Constitution incorporates international law and other human rights treaties which Kenya has ratified, directly into national law.³

Penal Code

6. In the period under review, the High Court of Kenya struck down two sections of the Penal Code due to their incompatibility with constitutional doctrines on free speech.
7. Following a 2018 Petition⁴ filed by Cyprian Andama, with ARTICLE 19 as an interested party, the High Court of Kenya in May 2021 declared that Section 66 of Kenya's Penal Code was unconstitutional.⁵ Cyprian Andama, a blogger and social media activist, had been charged with the offence of publishing alarming information. The particulars of the charge are that on April 11, 2018, he published a "false rumour" on his X (formerly Twitter) handle about alleged corruption at the Kenya Power and Lighting Company, the country's only power distribution firm.

8. ARTICLE 19 joined the petition to challenge the constitutionality of Section 66 of the Penal Code, arguing that this provision violated articles 33, 35 and 50(2)(a) of the Constitution as it unjustifiably suppressed freedom of expression, denied citizens the right to receive and impart information, and denied the accused the right to fair trial. Additionally, the law was overly broad and vague, leaving room for misuse and arbitrary enforcement
9. Similarly, on 18 March 2024, the High Court of Kenya declared that Section 77(1) and (3) of the penal code a colonial legacy which limits freedom of expression through the vaguely worded offence of subversion. It also stated that the provisions of section 77 were “overbroad and vague” and that they restrict the right to freedom of expression. Additionally, the court found there was a lack of clarity as to the purpose and intent, and the limitation in section 77 was not “provided by law”.⁶
10. The constitutional petition was brought by a coalition of human rights organisations including ARTICLE 19, after Joshua Otieno Ayika, an advocate, was arrested on 21 July 2023 after posting a tweet on his X account in which he predicted a military takeover of the government. He was charged on 24 July 2023, with “Subversive Activities” contrary to Section 77 (1) (a) of the Penal Code, Cap 63 and on the second count with “Publication of false information” contrary to section 23 of the Computer Misuse and Cyber Crimes Act, 2018. The Court, therefore, declared Sections 77 (1) and (3)(a), (b), (c), (d), (e), (f), and (g) of the Penal Code, Cap 63 unconstitutional.

Restrictions on Artistic Expression

11. Despite this, content-based restrictions on expression that fail to meet international human rights standards remain in the Penal Code. Section 132 criminalises anyone whose statements or actions incite defiance or disobedience toward public officers or are “intended to discredit” them, with penalties of up to three years imprisonment. The vague wording of this law has previously allowed state officials to misuse it against government critics.⁷ Section 194, which addresses criminal defamation, was also declared unconstitutional by the High Court of Kenya in 2017 but has yet to be repealed.⁸
12. Additionally, under Section 181, the “distribution and exhibition of indecent content likely to corrupt morals” is punishable by two years in prison or a fine of seven thousand shillings (approximately USD 54 as of October 2024). This provision has been widely used to suppress artistic expression, especially content related to the LGBTIQ+ community.
13. In September 2021, the Kenya Film Classification Board (KFCB) banned the distribution, exhibition, and broadcast of the films *I Am Samuel*,⁹ and in February 2022 it prohibited *Badhaai Do*,¹⁰ saying that both films were inappropriate for Kenyan audiences due to their portrayal of same-sex relationships. The penal code criminalises same-sex sexual activity, and the KFCB routinely censors LGBTIQ+ content. It is important to note that while Article 19(3) of the ICCPR permits the restriction of expression to protect public

morals, the UN Human Rights Committee has emphasised that these restrictions cannot be based solely on the values of a single tradition. Additionally, such limitations must adhere to the principle of non-discrimination.¹¹

Recommendations:

- Urgently repeal remaining provisions in the Penal Code that restrict freedom of expression, particularly Sections 132 and 181, which contain vague and overly broad language that enables misuse against government critics and artistic expression.
- Enforce the 2017 High Court ruling declaring Section 194 of the Penal Code on criminal defamation unconstitutional and ensure that it is formally repealed.

Restrictions of Online Expression

14. While Article 35 of the Constitution explicitly guarantees freedom of expression as a fundamental right, the government has routinely enacted several laws that seem intentionally crafted to suppress free expression on digital platforms and social media. One such example is the Computer Misuse and Cybercrimes Act (CMCA) of 2018,¹² which poses significant threats to online human rights. Despite the successful constitutional challenge to repeal criminal defamation provisions in the Penal Code, this legislation is partially aimed at re-criminalising defamation.
15. Section 22 of the CMCA criminalises the intentional publication of ‘false, misleading, or fictitious’ information if it is likely to incite violence, constitute hate speech, or damage the rights or reputations of others. While clause (c) addresses defamation, clauses (b) and (c) broadly and vaguely define “hate speech.” Violations can result in up to two years imprisonment and/or a fine. Section 23 further criminalises the “knowingly publishing” of false information that causes panic, chaos, or violence among citizens or damages a person’s reputation, with penalties of up to ten years’ imprisonment and/or a fine.
16. Following a constitutional petition led by the Bloggers Association of Kenya (“BAKE”) in 2018, the High Court of Kenya provisionally suspended twenty-six sections of the CMCA in total by conservatory order.¹³ A High Court judge ultimately dismissed BAKE’s case in February 2020, ruling that the law does not violate freedom of expression and allowing the suspended provisions to take effect. Later that month, BAKE appealed the High Court’s ruling to the Court of Appeal.¹⁴ The appeal is yet to be heard at the time of this report.
17. Kenyan authorities have routinely used provisions in the CMCA to restrict online expression. Examples include:
 - a. In separate incidents in 2020 and 2021, two bloggers Robert Alai and Cyprian Nyakundi¹⁵ were charged¹⁶ with publishing false information in contravention of the CMCA, in connection to their tweets about the COVID-19 pandemic.

- b. On 18 August 2020, police officers arrested two bloggers, Milton Were and Jack Okinyi, and drove them around Nairobi and its environs for hours.¹⁷ Their arrest was characterised by assault and warrantless entry into Were's home. Two days later they were presented in court and charged with publication of false information in contravention of the CMCA. Their arrest was connected to their reporting on a billion-shilling road tender corruption scandal.¹⁸ On 6 April 2021, police arrested an activist Edwin Mutemi wa Kiama for his commentary on governance and Kenya's heavy debt on X, accusing him of contravening the CMCA¹⁹ He was released on bail on April 8, 2021.²⁰
 - c. On 18 July 2024, social media commentator Francis Gaitho and businessman Alinur Mohammed Bulle, who also publishes commentary on X, were both charged under the CMCA. Gaitho was charged with publishing false information and cyber harassment²¹ while Bulle was charged with the publication of false information.²²
 - d. On 30 September 2024, authorities detained lawyer and activist David Morara Kebaso and released him on bail on 1 October, charging him with cyber harassment in contravention of the CMCA²³ citing a post on X,²⁴ in which Kebaso was critical of President William Ruto. Kebaso had gained huge social media following his citizen-led audits of government projects, unveiling corruption and misuse of public funds.
 - e. An hours-long Internet disruption on 25 June 2024,²⁵ amid youth-led protests, undermined the public's access to information about, and the ability of journalists, bloggers and other communicators to disseminate information. The disruption affected traffic in other East African countries including Burundi and Uganda,²⁶ and two Kenyan telecommunication providers, Airtel and Safaricom, attributed it to an undersea cable outage. However, there has been no credible inquiry into the causes of the outage.
18. In September 2024, the Computer Misuse and Cybercrimes (Amendment) Bill²⁷ was introduced in the National Assembly, proposing changes to the contentious Computer Misuse and Cybercrimes Act (CMCA), 2018. Clause 3 of the Bill seeks to empower the National Computer and Cybercrimes Coordination Committee (NC4), a multi-agency body whose mandate includes coordinating response to cyber security incidents, to "issue a directive to render inaccessible" websites and applications "where it is proved that a website or application promotes illegal activities, child pornography, terrorism, extreme religious and cultic practices." This is another clawback attempt to restrict online expression and expand state censorship, as previously, in March 2021, a similar Bill²⁸ had been tabled at the national assembly but was later withdrawn after massive pushback from civil society.²⁹
19. A key concern is the lack of oversight and expanded mandate of the NC4 to block access to websites, using overly broad and ambiguous language such as "where it

proves," "promotes illegal activities," or "extreme religious and cultic practices." This vague terminology risks enabling censorship of legitimate speech, including political dissent and religious expression. It could also lead to arbitrary blocking of websites and applications or foster invasive surveillance practices, particularly during politically sensitive periods such as protests and elections. These provisions, if passed, would contravene the Constitution of Kenya, particularly the rule of law and protection of fundamental rights enshrined in Article 10.

Recommendations

- Uphold the Constitution by guaranteeing that the rights people enjoy offline are equally protected online, including by urgently reviewing and amending the Computer Misuse and Cybercrimes Act (CMCA) to ensure its provisions are clearly and narrowly defined and consistent with international human rights standards, particularly concerning restrictions on online expression.
- Refrain from proposing or enacting legislation that undermines the right to freedom of expression online.
- Cease Internet shutdowns and other interferences with internet access, and ensure universal, free, open, interoperable, safe, reliable and secure use of and access to the internet.

Counter-terrorism and national security laws and surveillance practices

20. During its last review, Kenya accepted a recommendation to ensure that surveillance and profiling of citizens respects the right to privacy, including judicial oversight.³⁰ Article 31 of the Kenyan Constitution provides that every person has the right to privacy, which includes the right not to have: 'their person, home or property searched; their possessions seized; information relating to their family or private affairs unnecessarily required or revealed; or the privacy of their communications infringed.'
21. Despite this, the authorities have extensive powers to conduct mass and targeted surveillance, without appropriate human rights safeguards: this includes in particular Section 56 of the Security Laws (Amendment) Act (SLAA) of 2014,³¹ modifying the National Intelligence Service (NIS) Act (2012),³² to grant the Director General of the National Security Agency unfettered discretion to authorise surveillance to deal with "any threat to national security or to perform any of its functions" (Part V Section 42).
22. Section 36A (1) of the Prevention of Terrorism Act (PTA) of 2012,³³ grants extensive powers to national security organs to intercept communication. Article 36 of the NIS Act also raises concerns for the right to privacy, as it limits the right to privacy of any person under investigation. Part IV of the Computer Misuse and Cybercrimes Act 2018 grants police officers power during criminal investigations to among others: search and seize computer data, record and access seized data, seek production of computer data, require expedited preservation and disclosure of traffic data, collect traffic data in real-

time, and intercept content data. Service providers may be compelled under Sections 52 and 53 to collect information on behalf of the police, or allow police to collect information directly through the application of technical means.

23. While police officers are required to seek warrants from courts to authorise the aforementioned actions, in cases where expedited preservation and partial access are required, they are only mandated to issue a notice document to preserve national security. The Cabinet Secretary responsible for internal security has yet to enact regulations to guide the conduct of search, seizure and collection of evidence. As such, these practices are potentially carried out without a clear standard operating procedure.
24. These surveillance capabilities have seemingly negatively affected the work of Human Rights Defenders (HRDs):
 - a. The government has submitted multiple requests to technology companies, including Meta, X (formerly Twitter) and Google, seeking user information for civil, administrative, criminal, and national security purposes. Google, for instance, received 48 such requests from the government between January 2013 and July 2023, complying with two of three requests made in the first half of 2023.³⁴ In 2021, Meta received 25 requests concerning 114 user accounts.³⁵ Furthermore, in March 2022, X suspended 22 accounts of HRDs involved in the #NjaaRevolution online campaign, a move widely criticised as censorship.³⁶
 - b. A 2021 perception survey by the National Coalition of Human Rights Defenders in Kenya, found that HRDs were concerned about “their mobile phones being tapped and their communications intercepted”. The respondents perceived hackers and scammers as the most likely sources of this threat, followed by the intelligence service, and telecommunications and Internet service providers. These concerns had a chilling effect on the exercise of their rights and freedoms of expression, association, and assembly.
 - c. In November 2021, the Kenya Revenue Authority (KRA) announced it was monitoring social media posts in a bid to enhance tax compliance³⁷ and in May 2024, the government proposed amendments to the law that would give the KRA a blanket exemption from the provisions of the Data Protection Act through vaguely worded provisions, leaving it open for abuse.³⁸

Recommendations

- Conduct impartial, prompt, thorough, independent and effective investigations into the surveillance of journalists and human rights defenders, ensuring those responsible are held accountable.
- Conduct reforms to surveillance policies to guarantee compliance with human rights obligations, including the principles of legality, necessity and proportionality, and greater transparency and accountability.

- Review and amend all relevant laws, including the PTA Act, the SLAA Act and the Penal Code, to ensure clearer definitions of key terms and alignment with the Constitution and international human rights standards.
- Introduce safeguards to protect mobile telephone subscribers' personal data, ensuring the right to privacy.

Media Freedom

25. The media sector in Kenya is regulated through two laws: the Media Council Act (2013) (MCA), which establishes a media industry regulator with the power to set standards and impose hefty fines, and the Kenya Information and Communications (Amendment) Act (KICA) of (2013), which establishes a broadcasting regulator, the Communications Authority. During the previous review, ARTICLE 19 raised concern about both laws being overbroad, noting concerns of government interference in the Media Council of Kenya had been questioned and that KICA gives authorities broad search and seizure powers, and imposes disproportionate fines and criminal penalties on broadcasters. These concerns remain unchanged.
26. Amendments proposed to KICA in May 2023 could significantly expand the Communications Authority's powers, enabling it to suspend broadcast licences and impose stricter regulations on online content.³⁹
27. ARTICLE 19 Eastern Africa has also noted a trend in which courts have issued such high damages in civil defamation cases, as to violate media freedom⁴⁰. For instance, on 28 July 2021, the High Court issued damages to KES. 22 million (approximately USD 200,732 at the time) against the Star Newspaper and its journalists. The court did not consider an apology published by the media house as a mitigating factor or consider the financial capacities of the paper and its journalists.

Recommendations

- Amend media laws, including the Media Council Act and the Kenya Information Communications Act, in conformity with international and regional standards on freedom of expression.
- Ensure the judiciary fully respects the right to freedom of expression and ensures proportionality in remedies awarded in civil defamation suits.

Safety of journalists, human rights defenders, and other communicators

28. In its third cycle of the UPR, Kenya accepted several recommendations to ensure the safety of journalists and other human rights defenders, including investigating attacks against them.⁴¹ Nonetheless, during the period under the review, our organisations documented incidents of physical attacks, arbitrary detentions, and threats perpetrated with impunity mostly by state actors, pointing to a deterioration in the safety of journalists, human rights defenders, whistleblowers, and other communicators.

29. In 2020 and 2021, journalists and bloggers covering and commenting on COVID-19 faced violations.⁴² This included:

- a. On 27 March 2020, police officers in Mombasa County assaulted a Nation Media Group camera operator while he was covering their enforcement of the dusk-to-dawn curfew in force at the time.
- b. On 29 March 2020, police in Uasin Gishu County arrested Citizen TV journalists John Wanyama and Charles Kerecha on allegations of violating a pandemic-related curfew, despite members of the press being part of essential service providers exempt⁴³ from those restrictions.
- c. On 4 April 2021, police officers assaulted and briefly detained⁴⁴ Milele FM journalist David Omurunga while he was walking home from work at night, alleging that he had breached the COVID-19 dusk-to-dawn curfew.

30. Outlined below are some other violations against journalists, human rights defenders and other communicators during the period under review.

- a. On 13 May 2020, police assaulted and briefly arrested⁴⁵ three journalists reporting a demonstration by residents of Embu County over a land wrangle with the Tana and Athi River Development Authority (TARDA), a government body tasked with managing natural resources in the region. A year later in April 2021, police beat and injured nine journalists⁴⁶ covering forceful evictions in the region.
- b. On 20 December 2020, police officers raided Anguo FM in Taita Taveta County, after the station covered a student strike and on 4 March 2021 supporters of the United Democratic Alliance Party assaulted four journalists covering a by-election in Nakuru County.⁴⁷
- c. On April 20, 2021, the then director of Criminal Investigations, George Kinoti, threatened journalists from the Royal Media Services, accusing them of illegal firearm possession after they aired an investigative report on illegal weapons and uniform trading by police officers.⁴⁸ The threats forced the journalists involved in the report to flee the country.⁴⁹
- d. On 23 October 2022, police officers shot and killed Pakistani journalist Arshad Sharif.⁵⁰ Authorities claimed that Sharif was shot in a case of mistaken identity, but Pakistani investigators cast doubt on this state narrative, saying that it was “full of contradictions” and terming the killing an “assassination”.⁵¹ In October 2023, Javeria Siddique, Sharif’s widow, sued Kenyan officials for failure to investigate the killing.⁵² During court proceedings, the Independent Police Oversight Authority (IPOA), a civilian watchdog, said that it had submitted its completed investigations to the Office of the Director of Public Prosecutions. In a July 2024 judgement,⁵³ the High Court found that Sharif’s killing was arbitrary and unconstitutional, and awarded damages to his family.

- e. The Kenya Media Sector Working Group (KMSWG), a coalition of press rights groups of which ARTICLE 19 Eastern Africa is a member, documented at least 20 cases of physical attacks and violations against journalists covering March 2023 anti-government protests.⁵⁴ And according to research by CPJ, police officers briefly detained journalists, obstructed their coverage and forced them to delete footage.⁵⁵ They also fired water cannons and teargas directly at members of the press, injuring some of them and damaging their equipment.
- f. On 18 September 2023, members of the public physically assaulted three journalists -- Mike Ndunda from Kamba TV, Athiani FM's Richard Muasya and Boniface Mutisya of Mutongoi TV—who were covering a security raid of an illegal alcohol brewing den in Machakos County.⁵⁶
- g. In June 2023, Moses Kuria, who was at the time Kenya's trade minister, threatened to fire government officials advertising with the privately owned Nation Media Group, called the company's employees "prostitutes" and accused them of bias.⁵⁷ His outburst was triggered by an investigative report⁵⁸ on alleged corruption within his ministry.
- h. On 15 August 2023, Adam Kenneth Nthiga, a teacher at Muthambi Primary School, was abducted by two men, and driven to an undisclosed location in Tharaka Nithi County.⁵⁹ He was undressed, beaten up, and injured in apparent retaliation for his posts and comments on the poor state of roads in Muthambi Ward on a Facebook group.
- i. Daniel Muthiani, a political blogger also known as "Snipper" who was critical of Meru County governor Kawira Mwangaza, was last seen on 2 December 2023, leaving for a meeting with someone who had allegedly offered him an opportunity to work with the governor.⁶⁰ His body was found on 17 December 2023 with evidence of torture.⁶¹ In January 2024, police arraigned two suspects in connection to the killing.⁶²
- j. On 5 January 2024, private security personnel physically assaulted five journalists covering a raid by police officers and officials from the National Authority for the Campaign Against Drug Abuse (NACADA) on a bar in the capital Nairobi.⁶³
- k. Peris Mugera, a blogger from Tharaka Nithi County, went missing on 29 February 2024,⁶⁴ and was found dead on 1 March 2024.⁶⁵ The circumstances surrounding the death of Mugera, who was also a businessperson, were unclear.
- l. On 7 April 2024, the body of another political blogger, Duke Nyabaro, was found in Kisii County with a rope around the neck. Despite initial claims that Nyabaro, who was also a teacher, died by suicide, a subsequent postmortem examination confirmed that the cause of death was strangulation.⁶⁶

- m. In May 2024, a government official in Kakamega County reportedly threatened to kill a journalist, Douglas Dindi, after the reporter sought official comment on reports that a lack of ambulance services had contributed to the death of a mother and her child.⁶⁷
- n. During youth-led protests in June and July 2024, police officers assaulted and harassed numerous journalists. For instance, on 18 June 2024 police assaulted or briefly detained at least five journalists covering protests in Nairobi. On June 25, police hit a freelance journalist Collins Olunga⁶⁸ with a teargas canister and on July 16, police in Nakuru county shot broadcast reporter Catherine Wanjeri Kariuki⁶⁹ three times with rubber bullets, leaving her with grievous injuries. On July 17, 2024, plain-clothed police officers who refused to identify themselves abducted and briefly detained⁷⁰ veteran editor Macharia Gaitho, later claiming they had taken him into custody in a case of mistaken identity.

Recommendations

- Conduct impartial, prompt, thorough, independent and effective investigations into all alleged cases of violence, threats and attacks against journalists, media workers and human rights defenders, including by following and exhausting lines of enquiry that determine whether violence, threats and attacks result from the journalistic activities of the victims, and bring perpetrators to justice.

Freedom of Association

- 31. During the third cycle of the UPR, Kenya accepted recommendations to implement the Public Benefits Organizations (PBO) Act, “ensuring any amendments to the Act promote a transparent framework for NGOs to operate freely”, and to “review the 2018 Associations Bill and [to] ensure that NGO laws are in line with the right to freedom of expression”.⁷¹
- 32. The Constitution of Kenya, Article 36, explicitly guarantees individuals the right to form, join, or participate in activities of any association. This provision aligns with international and regional human rights instruments that Kenya has ratified.
- 33. On 24 February 2023, the Supreme Court of Kenya affirmed two decisions of the High Court and the Court of Appeal⁷² to allow for the registration of the National Gay and Lesbian Human Rights Commission as a non-governmental organisation (NGO). The Supreme Court agreed with the reasoning of the High Court that the LGBTIQ+ community has a right to freedom of association. The Court agreed that it would be discriminatory and unconstitutional to limit the right to associate purely based on sexual orientation.
- 34. On 14 May 2024, the PBO Act came into force, bringing positive changes in the regulation of non-governmental and public benefits organisations and repealing the

outdated NGO Coordination Act (1990). The law provides that all registered NGOs have 12 months to migrate to the new registration regime but the guidelines to facilitate the migration are yet to be developed as of 30 September 2024.

35. The Community Groups Registration Act 2022⁷³ has been utilised to interfere with the right to association of community groups and grassroots organisations through unnecessary bureaucratic administrative requirements.

Recommendations

- Enact regulations for the operationalization of all pending aspects of the PBO Act, ensuring meaningful consultation with civil society during the process.
- Put in place adequate legislative and policy frameworks for the protection of HRDs, including developing a protection mechanism that addresses intimidations, threats, attacks and abuses of HRDs as well as holding perpetrators accountable for violations against HRDs.

Freedom of Peaceful Assembly

36. Despite accepting numerous recommendations to harmonise its public order management laws with international and regional legal frameworks during the previous cycle, law enforcement authorities continue to exploit existing legal provisions to persistently infringe upon the right of freedom of assembly. The outdated Public Order Act of 1950 (revised 2012) is routinely abused to crack down on peaceful protests and protesters.
37. In May 2024, the Assembly and Demonstration Bill⁷⁴ was introduced in the National Assembly. The proposal includes problematic provisions such as a ban on wearing face coverings during demonstrations, which could infringe on privacy and freedom of expression rights. It also includes liability and authorization clauses that could discourage legitimate protests and grant excessive discretion to authorities to restrict demonstrations on vague grounds. Enacting this bill would violate the Constitution of Kenya, particularly by undermining the fundamental rights outlined in Article 37. At the time of this writing, the bill is set to proceed to its second reading in the National Assembly.
38. Between March to July 2023, the Azimio la Umoja–One Kenya Coalition, the main opposition political party in Kenya, led a series of countrywide protests over various issues including alleged electoral irregularities and the cost of living. The state declared the protests illegal through public pronouncements made by the Inspector General of the National Police Service and the Cabinet Secretary for Interior and National Administration.⁷⁵
39. The Kenya National Commission on Human Rights (KNCHR) verified 24 fatalities during those protests. In one case, a student at a local secondary school in Mathare, a low-income neighbourhood in Nairobi County, was fatally shot during the protests on 19 July 2023. Further, the KNCHR documented at least 130 verified cases where civilians

sustained “multiple injuries from rubber bullets, bullet wounds from use of live ammunition, injuries resulting from lobbed teargas canisters, and baton strikes”.⁷⁶

40. KNCHR further reported that in June 2023, 53 pupils at Kihumbuini Primary School in Kangemi, Nairobi County, “suffered serious breathing problems after teargas canisters were lobbed into the school by police officers”. KNCHR also documented a case where seven children were arrested and arraigned in court on allegations of participating in protests. One of the accused students was still in uniform at the arraignment. They were all later taken to Nairobi Remand and Allocation Prison, a facility for adult offenders.⁷⁷
41. In mid-2024, youth-led protests broke out in at least 34 of Kenya’s 47 counties⁷⁸, after a punitive 2024 finance bill was introduced in parliament. The protests expanded to include broader good governance concerns and in the period between 18 June to 15 July, the KNCHR noted that though demonstrations started as peaceful, they later turned chaotic. In early July, the organisation reported that between 18 June to 1 July 2024, 39 people were reported dead and 361 injured in protests across the country. Most postmortems for the deceased have not yet been conducted. The fatalities occurred in several counties, with the highest numbers in Nairobi (17), followed by Uasin Gishu (4), Kajiado (3), and Mombasa (3). The Commission also reported 32 cases of enforced or involuntary disappearances and 627 arrests of protestors, while others are in hiding due to threats to their lives. KNCHR condemned the “unwarranted violence and force that was inflicted on protesters, medical personnel, lawyers, journalists, and on safe spaces such as churches, medical emergency centres and ambulances” during the protests.⁷⁹
42. On 25 June 2024, the president deployed the Kenya Defence Forces (KDF) to assist national policing of demonstrations, before the official approval by Parliament as required by law. ⁸⁰Article 238(2)(b) provides that national security should be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights, and fundamental freedoms. On 27 June 2024, the High Court upheld the decision to deploy the KDF citing it was necessary given the need to preserve peace and public safety and protect critical infrastructure.⁸¹ As of 1 October 2024, the deployment of KDF had yet to be withdrawn/recalled.

Recommendations

- Amend laws that infringe on the right to freedom of assembly in line with international human rights standards, particularly the Public Order Act 1950 and Schedule 6 (B) of the National Police Service Act to limit police use of firearms in accordance with domestic and international law.
- Ensure that the National Police Service (NPS) and Directorate of Criminal Investigations (DCI) investigate and ensure accountability for officers who violate human rights, especially during public assemblies, and publicly report these actions to ensure non-repetition.
- Ensure the Inspector General of Police strengthens internal accountability mechanisms like the Internal Affairs Unit and collaborates with oversight bodies, such as the Independent Policing Oversight Authority (IPOA) and the Kenya National Commission

on Human Rights, to implement human rights-based reforms and enhance police professionalism.

Access to information

43. During the previous cycle, Kenya accepted various recommendations to strengthen good governance and fight corruption including through the implementation of the Access to Information Act.⁸² In line with SDG 16 which requires states to adopt legislative and policy guarantees for public access to information and establish the necessary institutional frameworks to implement these guarantees, there has been substantive legislative progress.
44. The Constitution explicitly provides for access to information. In particular, Article 35 of the Constitution recognises and guarantees citizens' right to access information providing the legal basis for the enactment of the Access to Information Act 2016, which became law on 31 August 2016.
45. There was a multi-sectoral advocacy for the development and enactment of the Access to Information General (Regulations) 2023.⁸³ These regulations, gazetted in 2023 and enforced from March 2024, seek to enhance the right to access information in Kenya by clarifying information request processes, specifying how authorities should provide information, and outlining appeal mechanisms for non-compliance.
46. Although Kenya has made significant progress in creating a strong legal framework for access to information, practical implementation remains challenging. Public institutions frequently show a lack of responsiveness to information requests, and mechanisms for appealing denials are not consistently effective. For instance:
 - a. Since 2019, Okoa Mombasa, a coalition that includes civil society organisations and workers unions, has sought access to contracts for Standard Gauge Railway (SGR), built and financed by China at heavy taxpayer cost, through requests under the Access to Information Act. The government has repeatedly refused to provide access to the contract, citing confidentiality and national security concerns. In 2021, Okoa Mombasa filed a petition in the High Court demanding the government release the documents. In May 2022, the court ruled in favour of Okoa Mombasa, stating that the government's refusal violated Article 10 of the Constitution and the Access to Information Act.⁸⁴ However, the government has not complied with the court's ruling. The urgency of accessing the full SGR contract documentation was highlighted by a recent investigation conducted by former government auditor Bernard Muchere, which revealed potential irregularities and fraud in SGR financing, including an alleged overpayment of KES 777 billion (USD 6,032,988,528).⁸⁵

Recommendations

- Ensure adherence to legal requirements for information disclosure by strengthening the enforcement capacity of the Commission on Administrative Justice (CAJ) and enhancing

public awareness and education on the right to access information and how to exercise this right.

- Enhance data collection and reporting on the implementation of access to information laws, ensuring comprehensive monitoring systems are in place to assess impact and identify areas for improvement in transparency and accountability.

¹ ARTICLE 19, 'Global Expression Report 2023. Available at: <https://www.globalexpressionreport.org/>

² **142.155** Implement the recommendations of the 2017 European Union Election Observation Mission, especially to strengthen the independence of the media and journalists and to provide protection for civil society (Czechia); **142.154** Uphold the right to freedom of expression, including for media organizations and human rights defenders, in accordance with article 19 of the International Covenant on Civil and Political Rights (Australia); **142.158** Guarantee full respect of the rights to freedom of expression and of association, by adopting comprehensive legislation on the protection of human rights defenders and by investigating all complaints of alleged violations (Uruguay); **142.159** Ensure the safety of human rights defenders (France); **142.160** Create a safe and enabling environment in which human rights defenders and civil society can operate free from hindrance and insecurity, including through the full operationalization of the Public Benefits Organizations Act (2013) (Ireland); **142.161** Ensure a safe and enabling environment for human rights defenders, including by investigating attacks (Norway);

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⁹ Fay Ngina, "KFCB bans gay film 'I am Samuel', terms it blasphemous," September, 2021, The Standard, <https://www.standardmedia.co.ke/entertainment/news/article/2001424264/kfcb-bans-gay-film-i-am-samuel-terms-it-blasphemous>

¹⁰ The Kenya Film Classification Board (KFCB), "KFCB Bans Indian Gay-Themed Film Titled: Badhaai Do", 14 February 2022, <https://kfcb.go.ke/~kfcbgok/kfcb-bans-indian-gay-themed-film-titled-badhaai-do>

¹¹ UN Human Rights Committee, 'General Comment 34 on Article 19' (CCPR/C/GC/34), 12 September 2011, p. 32. Available at: <https://digitallibrary.un.org/record/715606?ln=en>.

¹² The Computer Misuse and Cybercrimes Act, 2018. Available at: <https://www.theelephant.info/documents/computer-misuse-and-cybercrimes-act-2018/>

¹³ Petition 2016 of 2018, The Bloggers Association of Kenya (BAKE) vs. Attorney General & 5 Others (2018), eKLR. Available at: <http://kenyalaw.org/caselaw/cases/view/159286>

¹⁴ Republic of Kenya in the Court of Appeal at Nairobi. Civil Appeal No 197 of 2020. The Bloggers Association of Kenya (BAKE) vs. Attorney General & 5 Others. Available at: <https://shorturl.at/FWvOJ>

¹⁵ Mary Wambui, "Police hold blogger Nyakundi over COVID-19 Twitter post", 27 March 2020. Available at: <https://nation.africa/kenya/news/police-hold-blogger-nyakundi-over-covid-19-twitter-post-281064>

¹⁶ Article 19 Eastern Africa, "Kenya: Briefing on Attacks Against Journalists", March 2020-July 2021. Available at: https://www.article19.org/wp-content/uploads/2021/11/Covid-Response-Africa_Kenya.pdf

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- ¹⁸ ARTICLE 19 Eastern Africa "Kenya: ARTICLE 19 Eastern Africa calls for unconditional release of Milton Were and Jack Okinyi". Available at: <https://www.article19.org/resources/kenya-calls-for-unconditional-release/>
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- ²¹ Nation Media Group, "Social media personality Francis Gathito Charged with publication of false information", 18 July 2024. Available at: <https://www.youtube.com/watch?v=aFflkb4OjEM>
- ²² K24 TV, "Alinur charged with publishing false information against State House spokesperson Hussein Mohamed," 18 July 2024. Available at: https://www.youtube.com/watch?v=I_HAEJoF7LU
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- ³⁰ **142.176** Ensure that surveillance and profiling of citizens respect the right to privacy, including judicial oversight (Germany);
- ³¹ The Security Laws (Amendment) Act, No 19 of 2014. Available at: https://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2014/SecurityLaws_Amendment_Act_2014.pdf
- ³² National Intelligence Service (NIS) Act (2012). Available at: <https://www.nis.go.ke/downloads/THE%20NATIONAL%20INTELLIGENCE%20SERVICE%20ACT,%202012.pdf>
- ³³ The Prevention of Terrorism Act, 12 October 2012. Available at: <https://www.frc.go.ke/wp-content/uploads/2024/03/PreventionofTerrorismAct30of2012.pdf>
- ³⁴ Google Transparency Report. Global requests for user information. Available at: https://transparencyreport.google.com/user-data/overview?hl=en&user_requests_report_period=series:requests,accounts;authority:KE;time:&lu=user_requests_report_period
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- ³⁷ Kenyans react after KRA says it's coming for online wealth flaunters. Available at: <https://www.standardmedia.co.ke/national/article/2001428680/kenyans-reactafter-kra-says-its-coming-for-online-wealth-flaunters;> KRA's strategy on social media surveillance explained <https://villum.co.ke/kra-strategy-on-socialmedia-surveillance-explained/>
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- ⁴² ARTICLE 19 Eastern Africa, "Kenya: Briefing on attacks against journalists", March 2020-July 2021. Available at: https://www.article19.org/wp-content/uploads/2021/11/Covid-Response-Africa_Kenya.pdf
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- ⁷² Civil Appeal 145 of 2015. Non-Governmental Organizations Co-Ordination Board v EG & 5 others [2019] eKLR. Available at: <https://kenyalaw.org/caselaw/cases/view/170057/#:~:text=The%20High%20Court%20allowed%20the,thus%20filed%20the%20instant%20appeal.>
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- ⁸² **142.68** Continue efforts aimed at fighting corruption as well as illicit financial flows and tax avoidance (Azerbaijan); **142.70** Sustain efforts in the fight against corruption (Nigeria); **142.71** Continue taking targeted steps aimed at improving national legislation on the fight against corruption (Russian Federation); **142.72** Continue addressing corruption in a more effective manner, by enhancing transparency, accountability and institutional capacities (Turkey); **142.156** Further the implementation of the Access to Information Act (Greece); **142.164** Implement the Public Benefits Organizations Act, ensuring any amendments to the Act promote a transparent framework for NGOs to operate freely, and the Access to Information Act, to increase transparency and accessibility of public information (United States of America);
- ⁸³ Access to Information General (Regulations) 2023. Available at: <http://libraryir.parliament.go.ke/handle/123456789/23902>
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