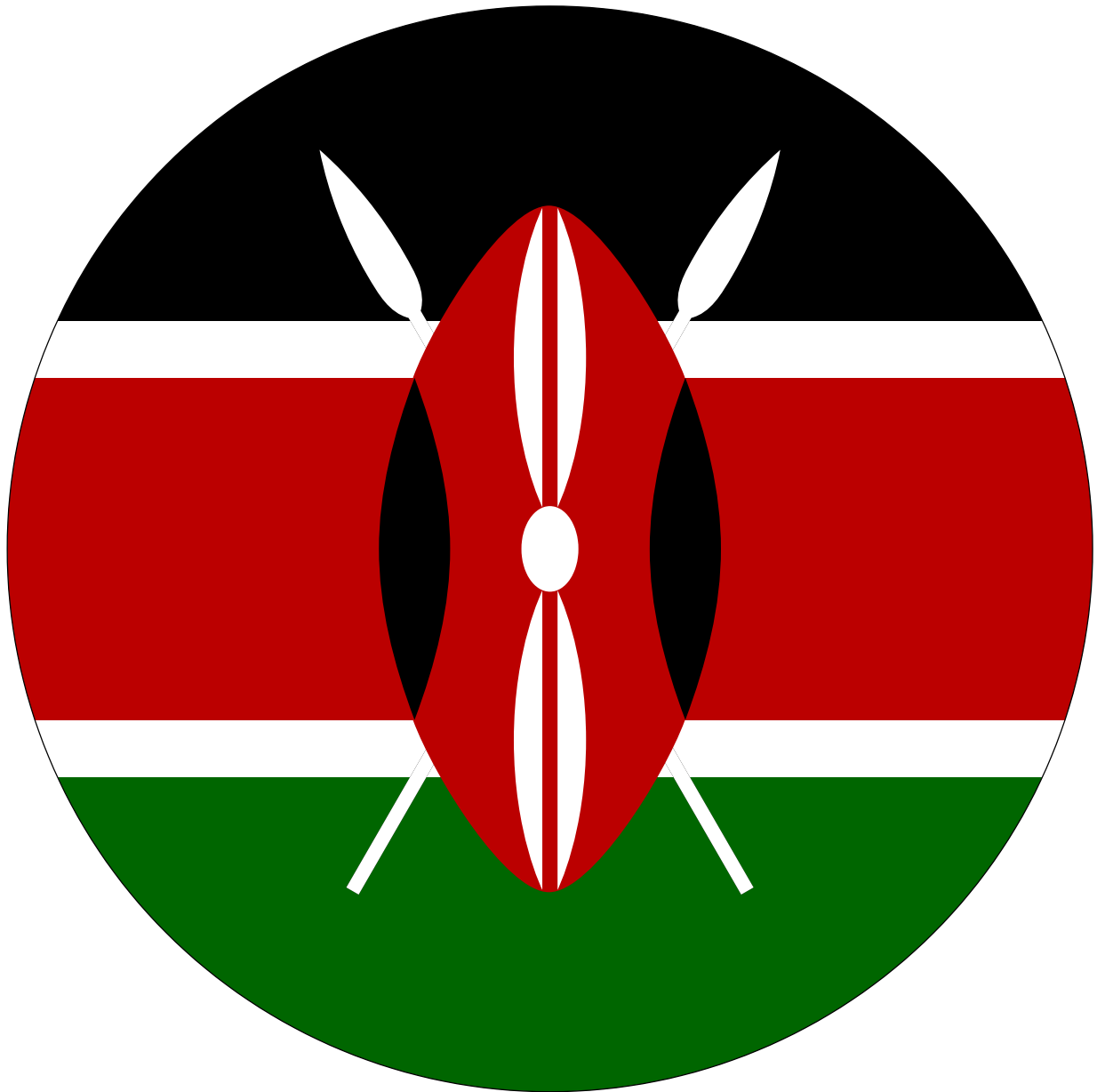


Kenya



Last updated: 6 September 2024

Update

On May 10, 2024, during the United Nations Civil Society Conference in Nairobi, the President announced that the Public Benefit Organisations (PBO) Act has commenced. It had been more than ten years since the law was initially passed. The PBO Act aims to renew values and restore public trust in the PBO sector. Further, it is intended to support collaboration between PBOs and the government and provide an enabling environment for the establishment and operations of PBOs.

With the PBO Act's commencement, it is expected in the short term that the Cabinet Secretary of the Ministry of Interior will, together with the Public Benefit Organisations Authority (PBORA),

present draft rules and regulations to the PBO sector for comments. The rules will guide the implementation of the PBO Act.

The PBO sector's institutional framework will also undergo changes: first, NGOs that had initially registered and operated under the NGO Coordination Act will automatically become PBOs under the new Act; second, the NGO Coordination Board will transform into the PBO Regulatory Authority; and, third, PBOs will spearhead the establishment of self-regulation forums like the PBO Federation to foster self-regulation. Once the rules are in place and regulatory and self-regulatory mechanisms are established and in operation, additional institutions will be set up, including the PBO Tribunal, which is a mechanism to redress grievances between PBOs and the PBORA, the PBO Federation, or other self-regulation mechanisms and the public.

Introduction

Traditionally, Kenyans lived in communities characterized by strong patterns of social ties and relations. People came together to promote mutual interests, pool resources, express ideas and participate in the governance of their communities as the communal structures afforded them the vehicles to do so. These structures included ethnic and kinship groups, such as families, clans and lineages, as well as councils of elders and age groups.

Associational life is deeply rooted in Kenya. It forms the basis on which *Harambee* (self-help) initiatives thrive. The term civil society, however, is relatively recent and is often associated with quests for social transformation and the realization of social justice. From the early 1920s until 1963, civil society organizations [1] (CSOs) played a prominent role in the struggle for independence. From the time of independence until the late 1970s, many CSOs worked closely with the Government to complement its service delivery efforts. However, the 1980s and 1990s were characterized by new dynamics: as western donors made economic support to the Government conditional on good governance and democratization, CSOs (in particular Non-Governmental Organisations and faith-based organisations) began to demand a multi-party system. They also became more vocal on national political issues such as constitutional reform and good governance. Indeed, these CSOs contributed immensely towards the transition (in 2002) from authoritarian to democratic rule through their efforts to advance political rights and freedoms as well to broaden the democratic process.

The new political dispensation in 2003 brought about an observed improvement in Government-CSO relations as meaningful dialogue and increased engagement between the two sectors began to take place. The new government encouraged CSOs and other stakeholders to partner with them, especially in addressing complex issues facing the country. However, CSOs were also aware they needed to address issues of competence, sustainability, and credibility within their own sector more earnestly if they were to play their role and engage with other partners effectively. A few efforts were made to address these issues and resulted in the formulation of standards for CSO competence and credibility that were to be administered through a self-regulation certification mechanism called Viwango (a word in Swahili meaning “standards”).

Many of Kenya's laws are statutory in nature and generally codify England's common law rules. In addition, Kenyan legislation regulates organizations substantially through enforcement of the organization's founding documents. Generally, the legal environment in which CSOs operate is supportive of civil society. The legal framework is characterized by multiple laws, which are implemented by different Government ministries, agencies, and departments. In 2013, a new law – The Public Benefit Organisations (PBO) Act – was passed. The law aimed to provide a more conducive legal framework for setting up and running CSOs that advance the public benefit.

Between 2013 and 2015, there were four attempts to amend the PBO Act, 2013, through proposals tabled in Parliament, but civil society successfully thwarted these plans through spirited campaigns. For the next decade, CSOs continued to urge the Government to commence the PBO Act, 2013 but without success due to lack of political will from the government. Finally, on May 10, 2024, during

the United Nations Civil Society Conference in Nairobi, the President announced that the PBO Act had commenced.

This Civic Freedom Monitor (CFM) country note was made possible through the research conducted by Faith Kisinga Gitonga, a consultant on the enabling environment for civil society.

[1] The term Civil Society Organizations (CSOs) is used generally in Kenya to refer to the wide array of organizations that operate in the realm between the individual and the state and are formed to promote the interests of their members or the public good. The term “NGO” is used specifically to refer to entities that are registered by the NGO Coordination Bureau. Though NGOs are just a small part of the larger NGO sector, they are the most visible. Under the NGO Coordination Act of 1990, NGOs can be established for the benefit of the public at large and for the promotion of social welfare, development, charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry, and the supply of amenities and services.

At a Glance

Organizational Forms	Public Benefit Organisations	Societies
Registration Body	Public Benefit Organisations Authority	Registrar of Societies
Approximate Number	12,162+	70,000+
Barriers to Entry	None.	(1) Vague grounds for denial of registration; (2) Mandatory registration (unregistered societies illegal).
Barriers to Activities	None.	(1) Registrar of Societies has wide discretion relating to the investigation, arrest, and search of any society; (2) The failure to maintain a register of members or annual accounts may expose a society to heavy penalties, including imprisonment; (3) Where it is alleged that a society is unlawful, the burden of proof is on the society.
Barriers to Speech and/or Advocacy	Possible misuse of Sections 22 & 23 of the Computer Misuse and Cybercrime Act that outlaws publication of false information to intimidate critics and independent voices.	Possible misuse of Sections 22 & 23 of the Computer Misuse and Cybercrime Act that outlaws publication of false information to intimidate critics and independent voices.

Barriers to International Contact	No legal barriers	No legal barriers
Barriers to Resources	No legal barriers	No legal barriers
Barriers to Assembly	No time limit specified for the authorities to respond to organizers' notification requests or right of appeal; counter-demonstrations prohibited; excessive force used by security officers.	No time limit specified for the authorities to respond to organizers' notification requests or right of appeal; counter-demonstrations prohibited; excessive force used by security officers.

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Key Indicators

Population	58,246,378 (2024 est.)
Capital	Nairobi
Type of Government	Republic
Life Expectancy at Birth	Male: 68.6 years Female: 72.2 years (2021 est.)
Literacy Rate	Male: 85.5% Female: 79.8% (2021)
Religious Groups	Christian 85.5% (Protestant 33.4%, Catholic 20.6%, Evangelical 20.4%, African Instituted Churches 7%, other Christian 4.1%), Muslim 10.9%, other 1.8%, none 1.6%, don't know/no answer 0.2% (2019 est.)
Ethnic Groups	Kikuyu 17.1%, Luhya 14.3%, Kalenjin 13.4%, Luo 10.7%, Kamba 9.8%, Somali 5.8%, Kisii 5.7%, Mijikenda 5.2%, Meru 4.2%, Maasai 2.5%, Turkana 2.1%, non-Kenyan 1%, other 8.2% (2019 est.)
GDP per capita	\$5,700 (2023 est.)

Source: [The World Factbook](#). Washington, DC: Central Intelligence Agency, 2020.

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International Rankings

Ranking Body	Rank	Ranking Scale (best – worst possible)
UN Human Development Index	146 (2023)	1 – 193
World Justice Project Rule of Law Index	101 (2023)	1-140
Transparency International Corruption Perceptions Index	126 (2023)	1 – 180
Freedom House: Freedom in the World	Status: Partly Free (2024) Overall Ranking: 52 Political Rights: 22 Civil Liberties: 30	Free/Partly Free/Not Free 100 – 0 40 – 0 60 – 0
Fund for Peace: Fragile States Index	36 (2024)	179 – 1

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Legal Snapshot

International and Regional Human Rights Agreements

Key International Agreements	Ratification*	Year
International Covenant on Civil and Political Rights (ICCPR)	Yes	1972
Optional Protocol to ICCPR (ICCPR-OP1)	No	—
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Yes	1972
Optional Protocol to ICESCR (OP-ICESCR)	No	—
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Yes	2001
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Yes	1984
Optional Protocol to the Convention on the Elimination of Discrimination Against Women	No	—

Convention on the Rights of the Child (CRC)	Yes	1990
Convention Against Torture	Yes	1997
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)	No	—
Convention on the Rights of Persons with Disabilities (CRPD)	Yes	2008
Convention for the Protection of All Persons from Forced Disappearance	Yes	2007
Optional Protocol on the Convention of the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC) and Optional Protocol on the Convention of the Rights of the Child on the sale of children child prostitution and child pornography (CRC-OP-SC)	Yes	2000

Regional Treaties

African Charter on Human and Peoples' Rights	Yes	1992
African Charter on the Rights and Welfare of the Child	Yes	2000
Treaty Establishing the African Economic Community	Yes	2001
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	Yes	2006
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	Yes	2004
Protocol on the Statute of the African Court of Justice and Human Rights	Yes	2017
African Youth Charter	No	—

On August 4, 2010, at a national referendum, Kenyans voted in favor of a new Constitution. The constitution review process, which preceded the referendum, has been touted as the most participatory constitution review process worldwide, as it was consultative from the start and largely integrated the views of the public in the final document. The new constitution promises far-reaching and comprehensive reforms in the governance of the country.

Relevant provisions include:

Implementation of rights and fundamental freedoms

21. (1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.

Freedom Of Expression

33. (1) 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.

(2) 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—
- e. constitutes ethnic incitement, vilification of others or incitement to cause harm; or
- f. is based on any ground of discrimination specified or contemplated in Article 27 (4).

(3) In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.

Access To Information

35. (1) 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.

(2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.

(3) The State shall publish and publicise any important information affecting the nation.

Freedom Of Association

36. (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.

(2) A person shall not be compelled to join an association of any kind.

(3) Any legislation that requires registration of an association of any kind shall provide that—

- a. registration may not be withheld or withdrawn unreasonably; and
- b. there shall be a right to have a fair hearing before a registration is cancelled.

Assembly, demonstration, picketing and petition

37. Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

Right to Language and culture

44. (1) Every person has the right to use the language, and to participate in the cultural life, of the person's choice.

National Laws and Regulations Affecting Sector

Relevant regional and national-level laws and regulations affecting civil society include (see also [Kenya Gazette](#)):

- [The Non-Governmental Organizations Coordination Act](#), Act No. 19 [1990]
- [The Non-Governmental Organizations Coordination Regulations](#) [1992]
- [Non-Governmental Organizations Coordination \(Amendment\) Regulations](#) [2010]
- [The Non-Governmental Organizations Council Code of Conduct](#) [1995]
- [The Companies Act](#), No. 17 [2015]
- [The Societies Act](#), Chapter 108 of the Laws of Kenya [1968]
- [The Trustees \(Perpetual Succession\) Act](#), Chapter 164 of the Laws of Kenya [1987]
- [The Trustee Act](#), Chapter 167 of the Laws of Kenya [1982]
- [The Income Tax Act](#), Chapter 470 of the Laws of Kenya
- [East Africa Community Customs Management Act](#) [2004]
- [Income Tax \(Charitable Donations Regulations\)](#) [2007]
- [Sessional Paper No. 1](#) [2006]
- [The East Africa Community Treaty](#) [1999]
- [The Public Benefit Organisations Act](#) [2013] (expected to be operational)
- [Data Protection Act](#), Laws of Kenya, No. 24 of 2019
- [Statute Law \(Miscellaneous Amendments\) Act](#), 2020
- [Trustees \(Perpetual Succession\) \(Amendment\) Act](#), No. 13 of 2021
- [The Computer Misuse and Cybercrimes Act](#), 2021
- [Data Protection Regulations](#), 2021
- [Public Finance Management Act \(PFMA\)](#), No. 18 of 2012
- [County Governments Act](#), No. 17 of 2012
- [Urban Areas and Cities Act](#), No. 13 of 2011
- [Public Procurement and Disposal Act](#), No. 33 of 2015
- [County Public Participation Guidelines](#)
- [Community Groups Registration Act](#), No. 30 of 2022
- [Income Tax \(Donations and Charitable Organisations Exemption\) Rules](#), 2024
- [Access to Information Act](#), 2016
- [The Access to Information \(General\) Regulations](#), 2021
- [Data Protection Act Regulations](#), 2019

Pending NGO Legislative / Regulatory Initiatives

1. **[The Trustees \(Perpetual Succession\) \(Amendment\) Act, No. 13 of 2021](#)** was gazetted on December 9, 2021. It seeks to simplify the registration of trusts by, among other reforms, moving the administration of the process to the office of the Principal Registrar of Documents. The Act broadens the scope of who can set up a trust to “any person or body of persons lawfully constituted for purposes of forming a trust.” Initially, the law provided that “Trustees who have been appointed by any body or association of persons . . . who have constituted themselves for any such purpose” (religious, educational, literary, scientific, social, athletic, or charitable). In addition, the Act expands the purposes that a trust can pursue to include charitable and non-charitable purposes. The earlier provisions that limited trusts’ purposes to “religious, educational, literary, scientific, social, athletic or charitable” were deleted. Following public participation, an explicit timeline for registration of a trust was introduced. The Registrar should take not more than 60 days to consider an application for incorporation of a trust, in order to grant or reject the application. This limitation of time will shorten the registration process and facilitate growth of the number of trusts in the country. There is a pending law reform initiative, led by the Kenya Community Development Foundation (KCDF) and the East Africa Philanthropy Network (EAPN), seeking broader reforms to the Trustees (Perpetual Succession) Act. Its objective is to create a strong legal foundation for the creation, regulation, and governance of trusts and foundations in Kenya through reviewing and amending the Trustees (Perpetual Succession) Act, CAP 164 and the Trustees Act, Cap 164.

2. The Ministry of Information, Communications, and the Digital Economy has begun a broad-based **ICT sector reform process**, which will be spearheaded by an ICT Sectoral Working Group (Taskforce Committee) on Policy and Legislative Reforms for the Information, Communications, and the Digital Economy Sector. The Sector Working Group will examine the existing policy, legislative, institutional, administrative, operational structures, systems, and strategies and recommend comprehensive reforms that align the ICT and digital economy sectors to emerging realities in the ICT landscape. The review will also seek to align the existing laws (some as old as 35 years) with the current constitutional dispensation. It is expected that by early 2024 the Working Group will submit a report and an implementation matrix, including draft policy and legislative proposals.
3. **The Public Fundraising Appeals Bill, 2024** (Senate Bill No. 36 OF 2024) was published in the Senate on July 12, 2024 and was submitted to the Standing Committee on Labour and Social Welfare and is due for a Second Reading in the Senate in September 2024. It seeks to replace the Public Collections Act, Cap.106, which was enacted in 1960 to regulate the collection of money and property from the public. The Bill aims to provide a framework for the regulation of fundraising appeals; to promote transparency and accountability in the carrying out of fundraising appeals to foster greater philanthropy; to enable the licensing and regulation of fundraisers; and to establish a framework of standards for persons and entities involved in the conduct of fundraising appeals.
4. **The Assembly and Demonstration Bill, 2024** is before the National Assembly. The Bill aims to provide a legal framework for the regulation of assemblies and demonstrations. It stipulates that a person intending to hold an assembly or demonstration must notify the regulating officer in advance. It also gives power to the regulating officer to impose conditions on the carrying out of an assembly or demonstration and such conditions may relate to public safety, the maintenance of public order, or the protection of the rights and freedoms of persons. In addition, the Bill specifies the prohibitions during an assembly or demonstration, and imposes liability for damage on an organization or person who convenes or takes part in an assembly or demonstration. Lastly, it sets out the powers of the police during an assembly or demonstration.

We are unaware of any other pending legislative/regulatory initiatives affecting NGOs. Please help keep us informed; if you are aware of pending initiatives, write to ICNL at ngomonitor@icnl.org.

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Legal Analysis

Organizational Forms

Civil Society Organizations (CSOs) in Kenya may assume one of following available organizational forms:

(1) Public Benefit Organisations (PBOs) are registered by the Public Benefit Organisations Authority (PBORA) and governed by the Public Benefit Organisations (Act No. 18, Laws of Kenya). The Act, which commenced on 14th May 2024, replaced the NGO Coordination Act, 1990. All NGOs that were registered under the NGO Coordination Act will be deemed to be registered as Public Benefit Organisations (PBOs) under the PBO Act.

The PBO Act, under section 2, defines “Public Benefit Organisation” as a voluntary membership or non-membership grouping of individuals or organisations, which is autonomous, non-partisan, non-profit making and which is:

- Organised and operated locally, nationally or internationally;
- Engages in defined public benefit activities; and
- Registered by the Authority.

“Public Benefit Activity” is defined under section 2 as “an activity that supports or promotes public benefit by enhancing or promoting the economic, environmental, social or cultural development or protecting the environment or lobbying or advocating on issues of general public interest or the interest or well-being of the general public or a category of individuals or organisations.

(2) Companies limited by guarantee and not having share capital are registered by the Business Registration Service under the Companies Act (Chapter 486, Laws of Kenya). They can exist to promote any legal purpose as long as these are contained in the memorandum of incorporation and articles of incorporation. As but one example, many service delivery institutions – such as schools and healthcare organizations – are registered as companies limited by guarantee and having no share capital. Between 2018 and 2022, 477 organisations were registered as Companies Limited by Guarantee. The cumulative number of CLGs as at December 2022 was 2,532.

(3) Trusts are established by families, groups or individuals to hold and manage assets for the benefit of others. Trusts may be incorporated under the Trustees (Perpetual Succession) Act, CAP 164, Laws of Kenya. The cumulative number of Trusts registered in Kenya as at December 2022 was 2,343.

(4) Under the Societies Act, a society is “any club, company, partnership or other association of ten or more persons, whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya” (Societies Act, Section 2). The definition specifically excludes trade unions, cooperatives, corporations, and certain other entities. Societies are registered and regulated by the Registrar of Societies, under the Societies Act, CAP 108, Laws of Kenya. After grassroots organizations, societies are the second largest category of CSO: there are over 70,000 societies registered in Kenya.

(5) Community Groups are the largest group in the civil society sector and operate primarily as mutual benefit organizations at the village and community level. There are over one million such groups registered, with 60, 000 registered in 2022 alone. While formerly recognized as Community-Based Organizations (CBOs) by the Department of State for Social Protection, these organizations did not have any particular registration legal regime until recently. Community groups are now able to attain legal status through registration under the Community Groups Registration Act of 2022. They are registered by the Directorate of Social Development under the Ministry of Labour and Social Protection. The Act defines Community Groups as “a voluntary association of individuals from the same community which is self-organized for a common purpose aimed at improving the livelihood of the group members or for a community benefit and includes a special interest group, community project, and community based organization but shall not include a Public Benefit Organization, NonGovernmental Organization or groups formed to champion a political cause or contrary to public policy.”

Public Benefit Status

Under section 7 of the PBO Act, the Public Benefit Organizations Regulatory Authority (the government agency that will register PBOs) has the authority to grant Public Benefit Status (Section 7(b)) to an organization registered under another law. This means that the organization will be “recognized” by the Public Benefit Regulatory Authority as an organization that is established for the public’s benefit. This could apply to a trust, society or a company limited by guarantee.

The PBO Act provides under section 12(1) that *The Authority shall issue guidelines that it shall apply in bestowing of public benefit organisation status as contemplated in section 7(b).*

The rules and regulations will therefore provide comprehensive guidelines for determining whether an organisation can acquire public benefit status. However, the rules are yet to be developed.

While PBOs registered under the PBO Act are set up to pursue public benefit objectives, other CSOs can also pursue public benefit purposes:

- Trusts may be established to carry out a wide range of purposes including charitable and non-charitable purposes.
- Societies may be established for any purpose or object.
- Community Groups can be created for the promotion of the welfare and economic interests of their members and the community.

The following organisations are not eligible to receive public benefit status. The PBO Act explicitly excludes from registration:

- A trade union within the meaning of Labour Relations Act, 2007
- A public body established by or under any written law
- A political party as provided for in the Political Parties Act, 2007
- A religious organization primarily devoted to religious teaching or worship
- A society within the meaning of the Societies Act
- A co-operative society as provided for in the Co-operative Societies Act
- A micro-finance institution within the meaning of the Micro-Finance Institutions Act
- A Community-Based Organization (CBO) whose objective include the direct benefit of its members

Barriers to Entry

Under the NGO Coordination Act (which was repealed by the PBO Act), ambiguous provisions were sometimes used to curtail transparency and hinder registration of certain NGOs. For example, the NGO Coordination Board could refuse registration of an NGO applicant if it was satisfied that its proposed activities or procedures were not “in the national interest”; or if it was satisfied, on the recommendation of the NGO Council (the NGO Council is a national umbrella body for NGOs), that the applicant should not be registered. While the Board sometimes furnished the applicant with an explanation for the refusal of registration, the Board was not legally required to do so. In practice, denial on the broad ground of the “national interest” has been used unjustifiably to curtail the rights of NGOs. [See Kameri-Mbote, Patricia, Dr. (2000) ‘The Operational Environment and Constraints for NGOs in Kenya’ IELRC Working Paper, www.ielrc.org]. By contrast, however, Sections 6- 13 of the new PBO Act provide clear, straightforward criteria for registration of PBOs and a clear, explicit timeline for processing an application for registration.

Under the Societies Act:

1. The Government may deny registration of societies on vague and ambiguous grounds, which invite arbitrary and subjective decision-making. Similarly, the Registrar of Societies has wide discretion to refuse to register a society if he has “reasonable cause to believe” that the society has among its objects, or is likely to pursue or be used for, any unlawful purpose or any purpose prejudicial to or incompatible with the peace, welfare or good order in Kenya, or that the interests of peace, welfare or good order in Kenya would otherwise be likely to suffer prejudice by registration of the society. The Registrar may also refuse to register a society where he is satisfied that such society is a branch of, or is affiliated to or connected with, any organization or association of a political nature established outside Kenya. Additional reasons for denial apply where the terms of the constitution or rules of the society or the name of the society is in any respect repugnant to or inconsistent with any law or is otherwise undesirable.
2. Societies are subject to mandatory registration, at least according to the law as written, although this has not proved problematic in practice. The Societies Act provides that every society which is not a registered society or an exempted society is an unlawful society. Hence, where ten or more persons get together, they are expected, according to the law, to have that group registered. There are stiff penalties for operating as a society without a registration certificate. This legal provision is, however, rarely enforced.

Barriers to Operational Activity

The new PBO Act in section 4 makes the Government responsible for providing an enabling environment for PBOs to operate. This is in line with the Government's obligations under international law to respect the freedoms of association and assembly. PBOs have a duty to furnish the Regulatory Authority with their annual report of activities and audited financial returns, six months after the end of every financial year (Section 31). The Authority may institute inquiries to determine if the activities of a PBO do not comply with the PBO Act or any other law (section 42(1)(h)). The powers of the Authority to cancel or suspend registration of a PBO are limited to specific instances and to be exercised in line with clear procedures, aimed at safeguarding PBOs (section 18 and 19).

The Societies Act includes a number of potentially troubling legal barriers affecting societies:

- The Act gives wide discretion to the Registrar of Societies and sweeping powers to various government officials with respect to investigating, arresting, entering and searching the premises of any society.
- The Act makes it an offence for a society to fail to keep a register of its members, their names, and the date of admission and exit. Where societies fail to comply with requirements to provide membership lists, annual accounts or other information, they are liable to heavy penalties, including fines and imprisonment.
- Where it is alleged that a society is an unlawful society, the burden of proving that it is a registered or exempted society or that it is not a society shall lie with the person charged.

In practice, however, these powers are rarely exercised. Societies generally operate under minimum supervision. Only occasionally, where a group is suspected to be conducting illegal activities, have the provisions in this Act been put into effect.

Barriers to Speech / Advocacy

Generally, there are no legal barriers for PBOs to speak out or engage in advocacy efforts on any issues of public importance. The PBO Act (sections 66 and 67) provides that PBOs may engage freely in research, education, publication, public policy and advocacy.

Barriers to International Contact

The PBO Act does not hinder PBOs from contacting, cooperating or communicating with other actors across international borders.

Barriers to Resources

Generally, Kenyan law provides a conducive framework for PBOs to seek and secure funding. For example:

- CSOs are generally permitted to engage in income earning activities provided that the income is used to further the CSO's purposes and that the activities are directly related to its purposes or carried out on behalf of its beneficiaries. NPOs can conduct business activities either directly or through for-profit subsidiaries.
- The Income Tax Act exempts a CSO from income tax on any gains or profits it obtained from a business that is related to its charitable purposes, as long as the profits are applied solely to the charitable purposes.
- The PBO Act (section 65) provides that PBOs may engage in lawful economic activities provided the income is used solely to support the PBOs public benefit purposes.

- Local resource mobilization through harambees (public fund-raisers) is recognized, as long as it adheres to the guidelines in the Public Collections Act, which is generally enabling. A bill on Public Fundraising Appeals is currently in Parliament.
- There are no special rules relating to the receipt of foreign funds by PBOs.
- There are, however, very few instances where CSOs receive funding from the Government.

Nonetheless, in 2024, the government accused 16 CSOs, including several PBOs, of using foreign funding to support nation-wide protests against the Finance Bill, 2024. The Public Benefit Regulatory Authority also forwarded files of the accused PBOs to the Directorate of Criminal Investigations (DCI) to launch a probe into their operations in the country.

Barriers to Assembly

The freedom of assembly is protected in Kenya's Constitution, in Article 37: "Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities." The Public Order Act regulates the organizations and staging of public gatherings and demonstrations.

Advance Notification. Under Sections 5(1) and 5(2) of the Public Order Act, notification of the intent to hold public meetings and public processions is mandatory. The threshold that triggers the notification requirement is when 10 people are present at an assembly. Section 5(2) of the Public Order Act states that, "Any person intending to convene a public meeting or a public procession shall notify the regulating officer of such intent at least three days but not more than fourteen days before the proposed date of the public meeting or procession." At least two practical concerns arise:

- There is no time limit specified for the regulatory authority to respond to the notification; it is only assumed that the regulatory authority must respond before the date of the proposed assembly.
- There are no statutory provisions about the right to appeal a negative decision from the regulatory authority. However, case law and specific legal provisions within constitutional and public administrative law allow challenges to oppressive and unreasonable government action. Despite this, practically speaking, it may not be possible to challenge and reverse the decision of a refusal from the regulatory authority in sufficient time for the meeting to take place, especially where the notice is submitted close to the day of the meeting.

Spontaneous Assemblies. Due to the notification requirement, spontaneous demonstrations are not allowed. According to Section 5(1) of the Public Order Act, "No person shall hold a public meeting or a public procession except in accordance with the provisions of this section." According to Section 5(1) anyone who participates in an "unlawful assembly" is liable to imprisonment for up to one year.

Time, Place, Manner, and Other Restrictions. According to Section 5(3), subsection (2)(b) of the Public Order Act, the notification about holding an assembly must specify "the proposed date of the meeting or procession and the time thereof, which shall be between 6:00 a.m. and 6:00 p.m." Thus, there are time restrictions for holding an assembly.

Simultaneous Assemblies. Sections 5(2) and 5(4) of the Public Order Act also do not allow more than one demonstration on the same day, at the same time or at the same venue/route. This in effect prohibits counter-demonstrations. The regulating officer will, however, allow another demonstration on a different date, or time and route.

Enforcement. Since 2011, there have been a number of demonstrations involving clashes between demonstrators and police and military personnel. The police have been accused of using excessive

power to intimidate Kenyans who protest. This been affirmed by videos of police abusing protestors, particularly vulnerable groups, such as internally displaced persons (IDPs).

Barriers to Public Participation

The laws of Kenya generally facilitate realization of the right to public participation. The Constitution recognizes public participation recognized as a core part of the democratic form of government. It is upheld as one of the national values (Art .10). It is also one of the national principles of public service (Art. 232). Several articles spell out that public participation is required at the national and county government levels in legislative and budgetary processes (Art. 201, 118, 196). A number of laws also stipulate that public participation is a requirement, including the Public Finance Management Act, the County Governments Act, the Urban Areas and Cities Act, the Public Procurement and Disposal Act, and the County Public Participation Guidelines. In few cases, like Makueni county, county governments have worked jointly with civil society organizations to raise awareness on public participation. The result has been a more engaged citizenry.

In addition, some laws mandate the integration of minorities or marginalized groups in county development and governance. For example, the County Government Act (section 34e) requires county governments to protect and promote the interests and rights of minorities and marginalized communities. Also, when establishing mechanisms, processes, and procedures for community participation, cities or urban areas must consider the special needs of minority and marginalized groups (County Government Act, 2nd schedule, clause 2). The Public Finance Management (County Government) Regulations (section 207) provide that regulations should provide for special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups.

However, the right to public participation is not fully recognized in practice. Civic education on public participation, though acknowledged as critical, is largely wanting in most parts of the country. A number of state practices restrict the effective implementation of public participation. These include lack of political will; restricted access to information; weak, uncoordinated, or missing structures or mechanisms to support implementation of public participation laws and policies; inadequate funding; and weak feedback practices. Limits to the realization of the right to public participation fall disproportionately on “special interest groups” (SIGs) such as women, youth, and people with disabilities. According to a 2020 survey by Mzalendo and TEAM with support from ICNL, SIGs are particularly affected by challenges that hinder public participation. The survey sought to examine the level of involvement of these groups in the decision-making processes in the county government of Kisumu during the COVID-19 pandemic, the effectiveness of their participation in decision-making processes, and the challenges they face. The survey found that there is a low level of engagement of SIGs in decision-making processes, occasioned by poor implementation of the legal framework for public participation, poor feedback processes, and the high costs of online platforms for engagement, among other challenges.

In addition, while there are no legal restrictions on climate or environmental advocacy, there are several practices, contrary to existing legal provisions, that have made the work of activists or communities particularly challenging. For example, there have been a few instances where people seeking to benefit from legal provisions that mandate consultation with or compensation of community members in areas where prospective projects are to be set up have bought parcels of land from the residents at disproportionately low prices. This dilutes the voice of community members on concerns they may have regarding prospective projects. In some cases, authorities have issued mining prospecting permits over community trust land, without following the procedures required by the law ([Mining Act](#), No. 12 of 2016, sections 38(2) & 128), which requires the community to give consent. Similarly, the Community Land Act (No. 27 of 2016), section 36, requires companies investing in community land to enter into a benefit sharing agreement with the community. Few companies do so.

A number of court cases have addressed the right to public participation:

- In the *National Gender and Equality Commission V Independent Electoral and Boundaries Commission (IEBC) & Another* [2013] eKLR, the court found that the IEBC did not develop sufficient guidelines or take specific steps aimed at increasing or promoting the participation of vulnerable groups within the electoral process other than passively inspecting the party lists submitted to it.
- In *Law Society of Kenya V Attorney General & 2 Others*, [2013] eKLR, the courts sought to determine whether there was public participation as enshrined in the Constitution. The Law Society of Kenya argued that the Statute Law (Miscellaneous Amendment) Act, 2012 was enacted without public participation required by the national values and principles of governance set out in Article 10 in the Constitution. They urged the court to annul the law in the event it found that there was no public participation noting that in view of the magnitude of the amendments, there ought to have been public consultation. The court found that the petitioner did not show or demonstrate that there was no public participation in the whole process.
- Similarly, in *Commission for the Implementation of the Constitution v Parliament of Kenya & another & 2 others & 2 others*, [2013] eKLR, Katiba Institute (a not-for-profit organization) submitted that the Leadership and Integrity Act was invalid insofar as it ignored views of Kenyans on effective enforcement, hence defeating the essence of public participation. However, the Court did not hold that the Act was unconstitutional for want of public participation, because the petitioners did not address the standard to assess the level of public participation in the legislative process.
- In *Moses Munyendo & 908 others v Attorney General & another*, [2013] eKLR, the court considered whether the Crops Act, 2012 and the Agriculture, Fisheries and Food Authority Act, 2012 which were passed into law and assented to by the President on January 14, 2013, were unconstitutional on the grounds that they were enacted without public participation. However, the court held that the petitioners did not discharge their burden of showing that the statutes were enacted without public participation.
- In *Nairobi Metropolitan PSV Saccos Union Limited & 25 others v County Of Nairobi Government & 3 others*, [2013] eKLR, the petitioners sought a declaration that paragraph 6.1 of the Schedule to the Nairobi County Finance Act, 2013, which authorized the Nairobi City County to change the motor-vehicle parking levies, is unconstitutional, to the extent that there was no public participation in the process of the making, and enactment of the Act. The court held that there was adequate and appropriate public participation prior to the enactment of paragraph 6.1.

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Reports

UN Universal Periodic Review Reports	Kenya, Universal Periodic Review 2020
Reports of UN Special Rapporteurs	Kenya
USIG (United States International Grantmaking) Country Notes	USIG: Kenya
U.S. State Department	2023 Human Rights Report
Failed States Index Reports	Foreign Policy: Fragile States Index
IMF Country Reports	Kenya and the IMF

International Commission of Jurists	Not available
International Center for Not-for-Profit Law Online Library	Kenya

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News and Additional Resources

While we aim to maintain information that is as current as possible, we realize that situations can rapidly change. If you are aware of any additional information or inaccuracies on this page, please keep us informed; write to ICNL at ngomonitor@icnl.org.

General News

[NGO Board Forwards Names Of Organizations Operating Without License To DCIs](#) (July 2024)

The Public Benefit Regulatory Authority has forwarded names of NGOs operating in Kenya without registration. The authority chairperson Mwambu Mabonga claimed that the NGOs have been receiving funds that they are not accountable for. He also alleged that the organizations are running unauthorized bank accounts and implementing projects that cannot be justified.

[Government must protect freedom of assembly and investigate killings](#) (June 2024)

The ITUC calls on the government of Kenya to investigate the killing of more than 20 people by security forces during a protest against its finance bill, which it has now withdrawn. The government must also guarantee that the people of Kenya can safely exercise their basic, democratic rights in the future.

[Court Declares Housing Levy Unconstitutional](#) (November 2023)

A High Court in Nairobi has declared the housing levy that was introduced by President William Ruto as unconstitutional. Delivering the court's decision, the High Court stated that they had looked through various sections of the act and where some were constitutional, some were not.

[Kenya's Anti-gay Bill Proposes 50-year Jail Term](#) (September 2023)

Kenya is considering the Family Protection Bill 2023, which could lead to 50-year prison sentences for non-consensual same-sex acts. Sponsored by Homa Bay Town legislator Peter Kaluma, the bill aims to ban homosexuality, same-sex unions, and LGBTQ activities and campaigns. It also intends to prohibit gay parades, assemblies, marches, and public cross-dressing.

[Supreme Court Reaffirms LGBTQ Right to Associate](#) (September 2023)

Kenya's highest court dismissed a challenge to its February ruling that allowed the National Gay and Lesbian Human Rights Commission to register as an NGO. The Supreme Court established the petitioner, opposition MP Peter Kaluma, is not an aggrieved party to its ruling since he was never involved in the case under rules that govern case hearings. Kenya's NGO Coordinating Board refused to register NGLHRC for more than a decade on grounds that it promotes same sex behavior, which the country's penal code criminalizes.

[Uhuru Refuses to Sign Controversial ICT Bill Into Law](#) (June 2022)

President Uhuru Kenyatta has refused to sign into law [the controversial Information Communication Technology Practitioners Bill](#), commonly referred to as the ICT Bill. While assenting to other Bills presented to him at State House, Nairobi on Tuesday, June 21, the President sent the Bill to Parliament with a memoranda asking the House to listen to practitioners and put into consideration their concerns.

Kenya's Supreme Court declares BBI unconstitutional (March 2022)

The Supreme Court on Thursday stopped President Uhuru Kenyatta's divisive bid to make sweeping constitutional changes through the Building Bridges Initiative (BBI), which opponents say was an attempt to widen his powers. In a majority judgment, the Supreme Court, whose ruling is final, upheld a finding by the lower courts that Mr Kenyatta initiated the changes through a constitutional provision exclusively reserved for ordinary citizens.

Gov't Warns Over 7,000 NGOs Of De-Registration Over Non-Compliance (March 2022)

Interior Cabinet Secretary Fred Matiangi said that out of the 11,890 registered NGOs, 9525 are active but only 3,000 have been filing compliance reports. He similarly warned the NGOs against being used by politicians during the electioneering period to perpetuate instability.

State plans to register ICT practitioners in new bill (December 2020)

Professionals working in Kenya's ICT sector will be required to register with the government to practice in their respective fields. This is according to a new Information and Communication Technology Practitioners Bill 2021, which is set to increase the burden of compliance on both individual and corporate service providers in the lucrative sector.

Kivutha Kibwana moves to Supreme Court over BBI bill (November 2020)

Makueni Governor Kivutha Kibwana has moved to the Supreme Court, seeking advisory opinion on issues regarding the proposed constitutional amendments through the BBI.

Police arrest 56 Kenyans during Sabasaba protests against brutality (July 2020)

The Saba Saba March for Our Lives protest turned chaotic on Tuesday after police teargassed demonstrators and arrested at least 56 people. The march against police brutality barely started as police barricaded all the start points.

Respect Kenyans' Privacy During Contact Tracing, State Warned (April 2020)

Human Rights groups have warned that the state's heightened surveillance measures to monitor citizens during the coronavirus pandemic could result in abuse. The groups said that an increase in state digital surveillance, such as obtaining access to mobile phone location data, threatens privacy, freedom of expression and freedom of association.

The Resilience of Kenya's Internet Freedoms During the Covid-19 Pandemic (April 2020)

Kenya recorded the first case of Coronavirus infection on 12th March. Since then, the numbers have continued to grow with a total of 103 infections and 3 fatalities as at 30th March. In order to curb the disease spread, the government instituted a number of measures, including border closure, and mandatory 14 days self-isolation for returning travelers. The government has announced a stay at home campaign, ordered curfews and banned public gatherings of more than 10 individuals. The Internet and related technologies have proven to be essential tools, in this period, for implementation of the measures and citizens' exercising economic, social and political rights. Self-isolation is enforced through monitoring of movements via mobile phone. Further, citizens' access to information related to the pandemic from health authorities is through Internet platforms. Meanwhile, business and education institutions have adopted the internet to continue operations.

Uhuru signs Bill for protection of personal data (November 2019)

President Uhuru Kenyatta has signed the Data Protection Bill into law setting the stage for the controversial Huduma Namba. The new law creates the position of a Data Commissioner who will oversee the operations of keeping data for Kenyans safe. Pundits opine that the move by President is linked to the court case over Huduma Namba registration that was filed on grounds that Kenya had no legislation on data protection.

Thumbs up to Kenya as delegates arrive for global conference (July 2019)

United Nations Population Fund has lauded the efforts and commitment of the Government of Kenya in preparations to host the International Conference on Population and Development (ICPD). Director of Communications at Arthur Erken says the efforts have translated to increased interest in the topics that affect marginalized groups from around the world who will be represented at the forum.

President signs amended Statute Law boosting counter-terrorism campaign (July 2019)

President Uhuru Kenyatta signed into law the Statute Law (Miscellaneous Amendments) Bill, 2019 and the Insurance (Amendment) Bill of 2018, at State House Nairobi. The Statute Law (Miscellaneous Amendments) Bill amends 11 Acts of parliament including those on Merchant Shipping, Alcohol Control, Tourism, Public Finance Management, Prevention of Terrorism and the Insolvency Act.

Senate Halts NIIMS Registration (February 2019)

The recently launched digital registration for Kenyans to get the unique and new forms of identification (Huduma Namba) has been suspended until further notice after the CSs of Interior and ICT failed to appear before the Senate. The legislators held that the exercise would only continue after Interior CS Fred Matiang'i and ICT's Joe Mucheru appeared before the Senate Standing Committee on National Security, Defense, and Foreign Relations on March 11, 2019, and a positive verdict given thereafter.

NIIMS is legally flawed, offers no protection against cyber crime (February 2019)

President Uhuru Kenyatta recently signed a law establishing the National Integrated Identification Management System (NIIMS) as a platform that will digitise and centralise records of vital life events of citizens and of foreigners' resident in Kenya.

Government will end extra-judicial killings at the Coast (January 2019)

Interior Cabinet Secretary Fred Matiangi has said the government will put an end to extra-judicial killing of suspects at the Coast. "We shall have respect to the rule of law and lives of citizens of this country," said Matiangi.

News archive

Biometric IDs listing set for this year after secret tender (August 2018)

Kibara seeks to mend strained relations with NGOs (July 2018)

Obama arrives in Kenya, meets Kenyatta and Odinga (July 2018)

Kenya court suspends government's media shutdown (January 2018)

Sword now targets AfriCOG (August 2017)

High Court strikes down Kenya's criminal defamation law (February 2017)

High Court orders commencement of the PBO Act without further delays (November 2016)

Kiunjuri operationalises 2013 Public Benefit Organisations Act (September 2016)

Parliament passes Access to Information law (August 2016)

Women MPs vow to fight gender Bill collapse in court (April 2016)

Kenyan Assembly Approves Access to Information Bill (April 2016)

NGOs board bankrupt, Parliament told (April 2016)

Fresh bid to amend Kenya's NGO law opposed by civil society (September 2015)

Embassy rejects plea on funding NGO (May 2015)

NGOs lose licences over terrorism claim (May 2015)

Ban NGOs linked to gay rights, says team (May 2015)

NGOs in Kenya urge taskforce not to alter law (March 2015)

15 NGOs Deregistered On Suspicion of Funding Terrorism (December 2014)

Bill on NGO funding proposes a return to days of intolerance (November 2014)

Democracy and development under siege in Kenya (November 2014)

100,000 jobs at risk over law on NGO financing (November 2014)

Fresh Onslaught on Foreign Funding and Civic Space (October 2014)

Kenyan President uses UK human rights plans to defend war crimes charges (October 2014)

Civil Society States Position on Miscellaneous Amendments Bill 2014 (July 2014)

Undermine state at your own peril, says new NGO Council boss (June 2014)

In Kenya, averting a move to strangle civil society with the financial noose, Maina Kiai
(January 2014)

MPs throw out Bill targeting NGOs (December 2013)

Why the International Community Supports Development Projects in Kenya (November 2013)

Government moves to cut NGOs foreign funding (October 2013)

Article on the PBO Act, Head of Operations, Compliance and Research, NGO Coordination Board (August 2013)

Civil society accuses judges of derailing reforms (November 2012)

Civil society to educate public on Constitution (August 2012)

Civil society up in arms over Integrity Bill (August 2012)

NGOs council wants funding at grassroots (June 2012)

Civil society challenges President over pending electoral laws (June 2012)

Rights activists reject amended laws (June 2012)

NGOs oppose Finance Minister's plan to tax their income (June 2012)

NGOs wrangle over law to rein in sector (May 2012)

Ntimama finally appoints NGO board (March 2012)

Civil society already driving vision 2030 (July 2011)

Constitutional community justice systems in Kenya (May 2011)

Illegal NGOs to be closed (March 2011)

Kenya: Don't waste the new Constitution (August 2010)

[**Kenya: Voice of reason in law review**](#) (August 2010)

[**Kenyan health Office says health aid best channeled through governments**](#) (July 2010)

[**House agrees to repeal law on injustices**](#) (April 2010)

[**Civil society to educate public on draft law**](#) (May 2010)

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