



**THE STATE OF CIVIL AND POLITICAL RIGHTS
FREEDOM OF ASSEMBLY, ASSOCIATION AND PROTECTION OF HUMAN
RIGHTS DEFENDERS**

**JOINT SUBMISSION TO THE HUMAN RIGHTS COUNCIL
AT THE UNIVERSAL PERIODIC REVIEW (UPR) OF KENYA
FOURTH CYCLE OF THE UPR WORKING GROUP**

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Submitted by the **National Coalition of Human Rights Defenders (Defenders Coalition)**

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1. INTRODUCTION

- 1.1. This report is submitted jointly by the Defenders Coalition, Social Justice Centres Working Group, Coalition for Grassroot Human Rights Defenders, Protection International - Africa, Kenya Human Rights Commission, Pema Kenya, The Gay and Lesbian Coalition of Kenya (GALCK+), Universal Rights Group, Ogiek People's Development Programme, Kerio Valley Community Organisation and Women Empowerment and Mentor All.
- 1.2. This report provides an overview of the state of civil political rights, particularly the freedom of assembly, association and protection of Human Rights Defenders since Kenya's last Universal Periodic Review (UPR) in 2020.
- 1.3. During the Third UPR Cycle, Kenya received 320 recommendations with 13 related to the creation of a safe and enabling environment civil society can operate free from hindrance and insecurity. Further, it received 22 recommendations on ensuring the safety and security of human rights defenders (HRDs) is guaranteed. Particularly, the recommendations called for investigations on attacks on HRDs, enhancing the capacities of journalists to safely do their work, guaranteeing full respect of the rights to freedom of expression and of association, upholding the right to freedom of expression and adoption of a law protecting HRDs per international standards.
- 1.4. The government accepted three (3) recommendations and developed an implementation plan¹. An assessment of various legal sources and human rights documentation covered in this submission reveals that the Government of Kenya has implemented one of the recommendations and partially implemented two. However, the government has, in equal measure, enacted various restrictive legislation since its previous UPR review including the Community Groups Registration Act, of 2022.²
- 1.5. As such, we express concern over the rise of civic and democratic space-related restrictions and violations, particularly, there is an onslaught on the freedom of assembly - permit requirements, prohibition of peaceful assemblies, crowd management, disguised law enforcement, abductions, forceful disappearance, indiscriminate killings of protesters and prosecution of peaceful protesters. Further, the weakening of legal and policy frameworks has exposed human rights defenders, community groups organizations, journalists and civil society organizations to unwarranted attacks, threats and intimidation. Particularly, the Penal Code, Community Groups Registration Act (2022), Computer Misuse and Cyber Crimes Act

¹ 3 RD CYCLE RECOMMENDATIONS UNDER THE UNIVERSAL PERIODIC REVIEW PROCESS (UPR)
<https://statelaw.go.ke/wp-content/uploads/2022/04/3rd-Cycle-UPR-Implementation-Plan-2021-to-2025.pdf>

² Community Groups Registration Act, 2022

https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2022/TheCommunityGroupsRegistrationAct_No.30of2022.pdf

(2018), and Public Benefits Organizations Act (2012).

- 1.6. This report investigates key developments and human rights issues under the **Freedom of Association, Peaceful Assembly, Harassment, intimidation, and attacks against human rights defenders, civil society activists, and journalists, Freedom of expression and access to information. Additionally, it proposes recommendations to the government of Kenya to improve the situation of these freedoms and rights.**

2.0. Freedom of Association

- 2.1. During Kenya's 3rd Universal Periodic Review (UPR) in 2020, the government accepted key recommendations to safeguard the freedom of expression. Notably, Kenya committed to reviewing the 2018 Associations Bill, which has raised concerns for imposing severe penalties on unregistered organizations, potentially violating the right to freedom of association. Additionally, the government committed to aligning its NGO regulations with international standards to foster a more supportive environment for civil society. However, the government has failed to put in place adequate measures to realize freedom of association. On the contrary and as analyzed below, the government has resorted to enactment of draconian laws that introduce punitive administrative action on community groups and individuals.
- 2.2. Article 36 of the Constitution guarantees freedom of association. Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Kenya is a state party, guarantees the right to freedom of association. However, despite these international commitments, violations of this right continue to persist in practice.
- 2.3. We welcome the significant human rights advancement stemming from Supreme Court of Kenya's Petition No. 16 of 2019³, delivered on 24th February 2023, where the Judiciary affirmed the right of Lesbians, Gay, Bisexuals, Trans Gender and Queer (LGBTQ) individuals to freely associate. The Court's decision held that, under the Kenyan Constitution, the rights to freedom of association (Article 36) and freedom of expression (Article 33) apply to all citizens, including LGBTQ persons. The Court also affirmed that LGBTQ individuals have the same right to form associations as any other group, reinforcing the principle of equal protection under the law (Article 27). This ruling represents a critical human rights milestone in Kenya, as it is one of the first instances where the judiciary explicitly upheld the rights of the LGBTQ community to organize and form associations, despite Kenya's broader legal framework that criminalizes same-sex conduct.

³ <http://kenyalaw.org/caselaw/cases/view/252450/>

2.4. Despite the constitutional affirmation, the government embarked on smear campaigns and restriction on the freedom of association to by introducing the Family Protection Bill and the Linda Jamii Bill,⁴ The proposed legislation poses serious threats to LGBTQ+ rights in Kenya. While they claim to protect family values, the bill seeks to criminalize homosexuality, same-sex marriages, and activities promoting LGBTQ+ identities, alarming human rights organizations. If passed into law, this bill threatens the right to association and security of LGBTQ individuals, organizations and groups as it criminalizes homosexuality with varying penalties and outlaws cross-dressing, sex reassignment surgeries, and gender nonconformity, exacerbating stigma and marginalization. The bill's implications for the LGBTQ+ community are dire, likely increasing discrimination and limiting access to healthcare and services.

2.5. In 2022, the government of Kenya enacted draconian legislation - the Community Groups Registration Act 13 of 2022⁵ which prohibits human rights work at the grassroots level. The Community Groups Registration Act proposes criminal sanctions under sections 26, 28 and 37, confers vague and potentially overboard powers to the Director of Social Development as provided by Sections 3, 12, 15, 32, 33, and carries unfair administrative and redress mechanisms. This law imposes stringent requirements to grassroots organizations which further criminalizes Human Rights Defenders in their diversities including excessive interference in activities regarding reporting, organizational structure among others to justify violations by authorities to include surveillance of organization online and offline. For instance, by a letter dated 15th August, 2023⁶ The Mathare Social Justice Centre was summoned by the Social Development Officer in Mathare Sub County, Nairobi County which stated that they were illegally acting contrary to the Community Benefits Organizations operations. This violates Article 36(1)(2) of the Constitution of Kenya which guarantees *(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.*

2.6. On May 8, 2024, security officers stormed two local social justice centres in their offices while discussing issues around the government's negligence and forceful eviction of poor families that had survived deadly floods that claimed many lives in Mathare Informal settlements. 27 human rights defenders were arrested⁷ and charged with trumped-up

⁴ THE LINDA JAMII (CONSTITUTION OF KENYA AMENDMENT) BILL, 2023
https://outrightinternational.org/sites/default/files/2024-02/LINDA_JAMII_Constitution_Amendment_Bill_2023.pdf

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<http://kenyalaw.org/8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/C/Community%20Groups%20Registration%20Act%20-%20No.%2030%20of%202022/docs/CommunityGroupsRegistrationAct30of2022.pdf>

⁶ <https://www.matharesocialjustice.org/social-justice-centres/workshop-on-the-community-groups-registration-act/>

⁷ Kenya exposes its human rights record to the world with uncalled for arrest of 27 HRDs from their Justice Centre Office <https://defenderscoalition.org/unlawful-arrests-in-kenya-kenya-exposes-its-human-rights-record-to-the-world-with-uncalled-for-arrest-of-27-hrds-from-their-justice-centre-office/>

charges of incitement to violence.

2.7. We welcome the commencement of the Public Benefits Organisations Act of 2013 (PBO Act)⁸. The PBO ACT was passed to increase accountability for both PBO Regulation Authority and PBOs but also provide an enabling environment for civil society organisations. As a consequence, all organisations including those registered under the repealed NGO Coordination Act are to be registered afresh under the PBO Act one year after the commencement of the Act. It is worth noting that the Act is yet to be fully operational. The Act states that all the activities registered under this law have to carry on public benefit activities as stated under Section 2.

2.8. One of the challenges foreseeable here is that CSOs may be directed to align their activities to fit the definition under the Act, this in turn will see organisations losing out on their key mandates and objectives. In addition, this law will expose CSOs to more scrutiny especially on the finances as provided under Sections 30 and 31. On its part, this scrutiny will in a way work to limit these organisations where they run the risk of being requested to redirect them to fund activities which the government will deem fit for public benefit. Further, the government may utilise this law to ensure that these organisations align with its agenda.⁹ On 8th September 2024, the Principal Secretary in the Ministry of Interior issued a statement directing all organisations under the PBO Act to align their activities with the president's 'bottom-up agenda'.¹⁰ In July 2024, the Public Benefits Organizations (PBO) Regulations Authority released a public advisory to 16 CSOs indicating that the authority was instituting investigations¹¹ into their human rights work. These alleged investigations came days after Kenya's youth denounced bad governance and demanded accountability through petitions and peaceful protests. The warnings signal an advent of increased scrutiny and restrictions on the activities and funding of these organizations, highlighting the ongoing challenges they face in maintaining their independence in a complex regulatory landscape.

Recently, we witnessed the government accuse civil society of funding and organising the protests through grants from the Ford Foundation. On 18th July 2024, the Principal Secretary in the Ministry of Foreign and Diaspora Affairs wrote to Ford Foundation, listing 16 civil society organisations, indicating that they were beneficiaries of grants from the

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<https://www.interior.go.ke/sites/default/files/2024-05/Public%20Benefit%20Organizations%20%28PBO%29%20Act.pdf> Accessed on 24th September 2024.

⁹ Gov't orders all NGOs to ensure donor aid aligns with bottom-up development agenda

<https://www.citizen.digital/news/govt-orders-all-ngos-to-ensure-donor-aid-aligns-with-bottom-up-development-agenda-n326970>

¹⁰ 'Kenya Calls on NGOs and PBOs to Align Operations with President Ruto's Development Agenda'

<https://www.capitalfm.co.ke/news/2023/09/kenya-calls-on-ngos-and-pbos-to-align-operations-with-president-rutos-development-agenda/> Accessed on 24th September 2024.

¹¹ PBO orders DCI Investigation into NGOs over anti-government protest funding

<https://www.citizen.digital/news/pbo-orders-dci-investigation-into-ngos-over-anti-government-protest-funding-n346388>

foundation and requested to be furnished with details of the expenditure, activities and beneficiaries of the funds.¹²

3.0. Freedom of Peaceful Assembly

3.1. The right of peaceful assembly is guaranteed under Article 37 of the Constitution of Kenya 2010, and the international treaties ratified by Kenya - The International Covenant on Civil and Political Rights,¹³ and The African Charter on Human and People's Rights.¹⁴ Article 37 outlines that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities*. Despite these provisions, the government has failed to put in place measures to ensure the full realisation of this fundamental right. Below are detailed assessments of the restrictions and violations thereof.

3.2. Kenyan Law¹⁵ prescribes prior notification procedures to allow security agencies to plan to adequately facilitate the assembly. Despite the legal provision, authorities have repeatedly acted in a manner suggesting that their interpretation of a notification for an assembly is a request for permission to assemble¹⁶. On several occasions, top officials within the security agencies have made public advisories indicating a ban on protests within several parts of the country, terming any such assembly unlawful. In addition, they imposed pre-authorization requirements beyond the legally recognized notice of assemblies. On 17 June 2024, Adamson Bungei - Nairobi Regional Police Commander - dismissed a planned assembly terming it illegal, unauthorised and prohibited¹⁷ stating that no application for a gathering or picketing permit had been submitted as required despite receiving a notice of the assembly on 17 June 2024. As a result, the police service often disseminates public advisories of “banning” planned assemblies¹⁸. This, in our view, is a violation of the right to assemble and petition government authorities.

3.3. Government crackdowns on critical and opposing voices have curtailed freedom of peaceful assembly in Kenya. Vocal individuals and groups that plan, participate in or organise peaceful assemblies, including demonstrations, are often violently attacked and

¹² ‘Govt formally writes to Ford Foundation over role in recent chaos’

<https://www.capitalfm.co.ke/news/2024/07/govt-formally-writes-to-ford-foundation-over-role-in-recent-chaos/>
Accessed on 24th September 2024.

¹³ Article 21, The International Covenant on Civil and Political Rights, 16 December 1966, UNTS 999.

¹⁴ Article 11, The African Charter on Human and People's Rights, 27 June 1981.

¹⁵ <https://media.ulii.org/files/legislation/akn-ug-act-2013-9-eng-2013-10-11.pdf>

¹⁶ <https://nation.africa/kenya/news/lsc-threatens-legal-action-against-nairobi-police-boss-for-banning-finance-bill-protests-4661916>

¹⁷ <https://www.tuko.co.ke/business-economy/552357-occupy-parliament-showdown-looms-nairobi-police-boss-bans-protests-cbd/>

¹⁸ <https://www.the-star.co.ke/news/2024-06-18-showdown-looms-as-police-ban-occupy-parliament-protests/>

arbitrarily detained.¹⁹ Security agencies have used beatings, arbitrary arrests and detention of protestors, indiscriminate and disproportionate use of teargas, live ammunition and water cannons laced with chemicals. For instance, in June and July 2024, over 1600 peaceful protestors were arbitrarily arrested while protesting against high taxation laws and bad governance.

3.4. The Kenya National Commission on Human Rights (KNCHR) reported that 61 peaceful protestors were killed as a result of police excesses including the use of live ammunition²⁰ during Kenya's anti-government Protests. In many instances, plain-cloth gun-bearing individuals were seen firing teargas canisters and shooting at peaceful protestors. We strongly believe that the conduct of Kenya's police service has violated the UN Code of Conduct and the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa as well as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

3.5. The NPS officers have often disrupted peaceful assemblies violently and used unlawful force leading to injuries and loss of lives. Consequently, criminalized HRDs have faced punitive judicial decisions including punitive bail/bond terms and lengthy judicial processes. Additionally, women human rights defenders have reported targeted intimidation and sexual harassment during arrest and detention.²¹

3.6. On 7 July 2020²², 2022 and 2023²³ security agencies violently disrupted peaceful demonstrations by deploying teargas and brute force against protestors, who in all instances had only whistles, water bottles and placards in their hands. Over 50 HRDs were arrested and charged with trumped-up charges. In some instances, the HRDs were released, unconditionally, a few hours after arrest - a deliberate strategy to deter, frustrate and restrict peaceful assemblies.

3.7. On 11th July 2023, two HRDs John Maigua and Darwin Wangeci were arrested for protesting dangerous sewage disposal practices in a local river In Nanyuki County. The two were arraigned in Nanyuki Law Courts and charged with fictitious charges of unlawful

¹⁹ Death toll mounts in Kenya as police intensify crackdown on protests against US-IMF backed tax regime
<https://peoplesdispatch.org/2023/07/21/death-toll-mounts-in-kenya-as-police-intensify-crackdown-on-protests-against-us-imf-backed-tax-regime/>

²⁰ Statement on Mukuru Murders and Updates on the Anti-Finance Bill Protests
<https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1201/Statement-on-Mukuru-Murders-and-Updates-on-the-Anti-Finance-Bill-Protests>

²¹ <https://www.article19.org/wp-content/uploads/2022/03/Summary-report-Perception-survey-on-role-and-contribution-of-women-journalists-and-human-rights-defenders-in-civic-space..pdf>

²² More than 50 activists arrested as police break Saba Saba march in Nairobi
<https://www.capitalfm.co.ke/news/2020/07/more-than-50-activists-arrested-as-police-break-saba-saba-march-in-nairobi/>

²³ Statement against the use of Force and Arrest of Human Rights Defenders During Saba Saba Protests
<https://icj-kenya.org/news/statement-condemning-the-use-of-force-and-arrest-of-human-rights-defenders-during-the-saba-saba-peaceful-assembly-protests-and-picketing/>

Assembly, erecting a roadblock, incitement to violence, and creating disturbance, which they pleaded not guilty to.

3.8. In 2024, the National Assembly introduced the Assembly and Demonstrations Bill no 28 of 2024, first tabled in 2023 and reintroduced on 26 April 2024²⁴. These laws, if enacted, will severely curtail the democratic space. The bill may impose heavy sanctions and restrictions on the right to assemble peacefully thus hindering HRDs' ability to petition the state and to promote and protect human rights. This retrogressive bill was withdrawn after a public outcry during the deadly anti-taxation demonstrations in June 2024.

4.0. Harassment, intimidation, and attacks against human rights defenders, civil society activists, and journalists.

4.1. The Declaration on Human Rights Defenders adopted by the General Assembly in its resolution 53/144²⁵ incorporates human rights enshrined in legally-binding international instruments and reaffirms rights that are instrumental to the defence of human rights, including, inter alia, freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to gain access to information, to provide legal aid and to develop and discuss new ideas in the area of human rights.

4.2. Kenya is a signatory to all major international and regional human rights instruments. These have been domesticated in the constitution of Kenya under article 2 (5)(6) which states that the general rules of international law shall form part of the law of Kenya. Despite these guarantees, no legal and policy framework protects HRDs thereby leaving HRDs exposed to risks of abductions, arbitrary arrests, illegal detention, criminalization, judicial persecution, threats, intimidation, enforced disappearances and murder while undertaking their work.

4.3. In 2018, The Kenya National Commission on Human Rights and the Defenders Coalition developed a model policy²⁶ for the protection of HRDs. The same was presented to the Office of the Attorney General - in 2019. If adopted, the model policy will provide a policy framework that will enable us to put in place a legal framework for the protection of HRDs.

4.4. In Kenya's third UPR cycle, Austria and Norway recommended that Kenya to ensure the safety of human rights defenders by putting in place a policy framework to protect human rights defenders. Further, Kenya accepted recommendations on ensuring transparent and effective investigations in cases where human rights defenders have been harmed and to adopt a law protecting human rights defenders per international standards. While there have been efforts by the government to ensure accountability, HRDs continue to face increased attacks in a climate of impunity.

²⁴The Assembly And Demonstration Bill, 2024

<http://www.parliament.go.ke/sites/default/files/2024-06/THE%20ASSEMBLY%20AND%20DEMONSTRATION%20BILL%20C2024.pdf>

²⁵ RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

<https://documents.un.org/doc/undoc/gen/n99/770/89/pdf/n9977089.pdf>

²⁶ Model Human Rights Defenders Policy and Action Plan

https://www.knchr.org/Portals/0/CivilAndPoliticalReports/Human%20Rights%20Defenders%20Policy%20and%20Action%20Plan_B5_L_22-1-18.pdf?ver=2018-06-06-191138-293

- 4.5. Following the killing of HRD Willie Kimani and two others in July 2016, three police officers were convicted for his murder and two others in 2023²⁷. In December 2023, a man was found guilty of sexual crimes and the murder of sexual minority activist Sheila Lumumba.²⁸
- 4.6. On 3 January 2024, a Woman Human Rights Defender - Elizabeth Ekaru - was brutally murdered²⁹ by her neighbour Mr. Patrick Naweek over what is suspected to be land ownership rights. The accused was arrested, prosecuted and awaits sentencing after the Court found him guilty of Elizabeth's death in August 2024.
- 4.7. Human Rights Defenders operating in hostile, conflict-ridden arid and semi-arid regions such as Baringo, Samburu, Elgeyo Marakwet, West Pokot, and Turkana Counties are increasingly becoming targets for attacks for their human rights work. In 2024, three peace ambassadors- Eliud Kipkeu, Patrick Komen and Joseph Suter from Baringo County were murdered³⁰ by bandits while working to promote peace between two conflicting ethnic groups.
- 4.8. Woman Human Rights Defender, environmentalist, and conservationist Johanna Strutchbury was shot at her home on 15th July 2021. Her killing might have been as a result of her work of protesting the grabbing and destruction of a local forest³¹. The investigations into her death are still inconclusive.
- 4.9. Human Rights Defenders Bob Njagi, Longton Jamil and his Brother Aslam Longton were disappeared on 19 August 2024 where eyewitnesses stated that they were physically assaulted and forcibly bundled into a private car that sped off. Their phones were immediately switched off. The three were dumped in the middle of the night by a roadside in Nairobi, 31 days after their disappearance. The three were held incommunicado and reportedly subjected to both physical and psychological torture.³²
- 4.10. The Penal Code Chapter 63 Laws of Kenya particularly sections 78 and 79 on unlawful assembly and Section 95 on threatening breach of peace have been used by law enforcement to criminalize, threaten, intimidate or harass HRDS. Even though most human rights defenders adhere to the legal provisions and procedures, those in authority do not view it

²⁷ 'Willie Kimani: Kenya ex-policeman sentenced to death for lawyer's murder'

<https://www.bbc.com/news/world-africa-64509793>

²⁸ 'Kenyan Man Gets 30 Years for Lesbian's Murder. Activists Aren't Happy'

<https://www.metroweekly.com/2024/01/kenyan-man-gets-30-years-in-jail-for-lesbians-murder/>

²⁹ 'COURT FINDS GUILTY MAN ACCUSED OF STABBING TO DEATH WOMEN HUMAN RIGHTS DEFENDER ELIZABETH EKARU' <https://defenderscoalition.org/court-finds-guilty-man-accused-of-stabbing-to-death-women-human-rights-defender-elizabeth-ekaru/>

³⁰ 'Bandits kill three, spark tension in Kerio Valley village'

https://www.standardmedia.co.ke/article/2001488465/bandits-kill-three-spark-tension-in-kerio-valley-village?utm_cmp_rs=amp-next-page

³¹ 'Statement on Joannah Stutchbury's Murder' <https://defenderscoalition.org/statement-on-joannah-stutchburys-murder/>

³² 'Kitengela Three: Our 32 days of horror in secret torture cells' <https://nation.africa/kenya/news/kitengela-three-our-32-days-of-horror-in-secret-torture-cells--4769894#story>

from the same lens, as a consequence, their actions are criminalised.³³ On 7th July 2023, 34 HRDs were arbitrarily arrested and charged with a trumped-up charge of illegal assembly.³⁴

- 4.11. The courts of law have been used to frustrate human rights defenders' have been arrested and have numerous ongoing cases at various law courts. However, the trumped-up cases are usually acquitted under Section 87(a) of the Criminal Procedures Code.³⁵ In addition, the government is notorious for not respecting court orders relating to HRDs.
- 4.12. In Kenya, Public Order Management Laws and COVID-19 Containment Measures were applied discriminately. For example, politicians are allowed to hold public political gatherings to campaign for the 2022 general election. In contrast, citizens are arrested for protesting³⁶ corruption and misappropriation of public funds. In August 2020, and while protesting the misappropriation of public funds under the #ArrestCOVID-19Millionares protest, six protesters were arrested in Mombasa, charged under Covid-19 regulations.³⁷ The six were later sentenced to six months in prison or pay a fine of USD. 500.
- 4.13. In May 2020, while submitting a petition to the Nairobi Water Services sharing the grievances of the residents of the Matopeni area, protesters were arrested and charged under the regulations. During the 7 July 2020 SabaSaba march, protesters were harassed, arrested and detained. Although they were released without charges after a day, their march was completely derailed.
- 4.14. Worryingly, one HRD, Julius Kamau has been arrested at least 10 times for peacefully assembling and protesting.³⁸ On several occasions, Julius has been charged before a court of law with trumped-up charges. 8th May 2024, 27 HRDs from the Mathare Social Justice Centre and the Ghetto Foundation were arrested while peacefully demonstrating demolitions in Mathare.³⁹
- 4.15. Human Rights Defenders have been harassed and intimidated by government agencies that institute administrative actions on grassroots Social Justice Centres (SJC). On 2nd August 2024, Angaza Jamii, a Community Based Organisation in Kisumu, received a letter from the Kenya Revenue Authority requesting them to share several documents including a

³³ 'Activist who disrupted CS Ndung'u photo session freed on bond' <https://nation.africa/kenya/news/activist-who-disrupted-cs-ndungu-photo-session-freed-on-bond-4662988> . '26 members of Mathare Justice Center arrested for alleged incitement' <https://eastleighvoice.co.ke/demolitions/40312>. Accessed 24th September 2024.

³⁴ <https://icj-kenya.org/news/statement-condemning-the-use-of-force-and-arrest-of-human-rights-defenders-during-the-saba-saba-peaceful-assembly-protests-and-picketing/> Accessed on 25th September 2024.

³⁵ Withdrawal from prosecution in trials before subordinate courts In a trial before a subordinate court a public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgement is pronounced, withdraw from the prosecution of any person, and upon withdrawal (a) if it is made before the accused person is called upon to make his defense, he shall be discharged, but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts.

³⁶ Covid-19 protests spread to Mombasa, police arrest activists

<https://nation.africa/kenya/counties/mombasa/covid-19-protests-spread-to-mombasa-police-arrest-activists-1925520>

³⁷ <https://www.article19.org/resources/blog-the-impact-of-covid-19-on-the-right-to-protest-in-kenya/>

³⁸ 'Activist who disrupted CS Ndung'u photo session freed on bond' <https://nation.africa/kenya/news/activist-who-disrupted-cs-ndungu-photo-session-freed-on-bond-4662988> Accessed 25th September 2024.

³⁹ 'How defective charge sheet freed 27 activists arrested over demo' <https://www.the-star.co.ke/news/2024-05-11-how-defective-charge-sheet-freed-27-activists-arrested-over-demo/> Accessed 25th September 2024.

tax exemption certificate, audited accounts, payment vouchers and bank statements. Equally, on 5th August 2024, Sitarusha Mawe Tena SJC received a similar letter from the authority. These letters were sent a few days after the government announced a crackdown on CSOs.

- 4.16. The Media Council of Kenya⁴⁰ has documented attacks on journalists covering various issues in Kenya. On 27th March 2023, the Media Council of Kenya condemned the attacks of 15 journalists covering protests against the high cost of living in Kenya.⁴¹
- 4.17. On 27th June 2024, Collins Olunga, a journalist with AFP in Nairobi, suffered an injury caused by a teargas canister thrown at him by police and was transferred to a hospital.⁴² In addition, KBC photojournalist John Omido, was sprayed with water mixed with harmful chemicals, a potent combination that was being used to disperse protesters. Jutus Mwangi from The Standard was rounded up, brutally bundled into a police vehicle, and later thrown off the speeding vehicle.⁴³
- 4.18. On 16th July 2024, journalist Catherine Wanjeri was shot at by police three times while covering the protests in Nakuru county.⁴⁵ On 23rd October 2022, Pakistani journalist Arshad Sharif was shot and killed by police in the country.⁴⁶

5.0. Freedom of expression and access to information

- 5.1. The Constitution of Kenya, assures the freedoms of expression and access to information under articles 33 and 35 respectively. Article 33 provides *every person the right to freedom of expression, which includes freedom to seek, receive or impart information or ideas*. Article 35 stipulates, *every citizen has the right of access to information held by another person and required for the exercise or protection of any right or fundamental freedom*.
- 5.2. Article 19 (2) of the International Covenant on Civil and Political Rights provides freedom of expression.

⁴⁰ Kenya's regulator of the Media established by the Media Council Act, No. 20 of 2013 for purposes of setting of media standards and ensuring compliance with those standards as set out in Article 34(5) of the Constitution and for connected purposes.

⁴¹ MASS ACTION THAT ATTACKS MEDIA IS SELF-DEFEATING AND THREATENS DEMOCRACY <https://mediacouncil.or.ke/sites/default/files/advisory-press-releases/Press%20Statement-%20Mass%20Action%20that%20Attacks%20Media%20is%20Self%20Defeating%20and%20Threatens%20Democracy.pdf>

⁴² 'Kenya: Journalists attacked by police during protest in Nairobi' <https://www.ifj.org/media-centre/news/detail/category/africa/article/kenya-journalists-attacked-by-police-during-protest-in-nairobi> Accessed on 1st October 2024.

⁴³ As above.

⁴⁴ <https://www.ifj.org/media-centre/news/detail/category/africa/article/kenya-journalists-attacked-by-police-during-protest-in-nairobi> Accessed on 1st October 2024.

⁴⁵ 'Nakuru journalist shot by police: 'Nobody can convince me I was not the target' <https://nation.africa/kenya/counties/nakuru/nakuru-journalist-shot-by-police-nobody-can-convince-me-i-was-not-the-target--4695820> Accessed on 1st October 2024.

⁴⁶ 'Kenyan police on trial for 'assassination' of Pakistani journalist' <https://www.aljazeera.com/news/2023/10/31/kenyan-police-unit-go-on-trial-for-death-of-prominent-pakistani-journalist> Accessed on 1st October 2024.

- 5.3. The Computer Misuse and Cybercrimes Act of 2018 and in particular sections 22 and 23, have been utilized to curtail the freedom of expression, especially at the digital front. Section 22 provides for false publication and where one is found liable upon conviction, they pay a fine of Kenya Shillings five million or imprisonment of up to two years or both. Section 23 on its part focuses on publication of false information. Upon conviction, the person is liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or to both.
- 5.4. On 11th June 2020, activist and blogger Mutemi wa Kiama was first arrested for his posts on social media platforms. On 6th April 2021, he was arrested again following his post on the IMF loan. Although he was released unconditionally the court issued him a punitive cash bail of Kenya Shillings 500,000 approximately USD 4,500.⁴⁷ In addition, the court barred him from posting anything on his social media accounts and that they be suspended. Following his arrest, his laptop and mobile phone were confiscated and the same were not returned to him. The case is still pending in court.
- 5.5. On 16th December 2023, the body of Daniel Muthiani also known as ‘Sniper’ was discovered. He had disappeared on 2nd December 2023.⁴⁸ Muthiani was a political blogger and activist who used satire to address pressing human right issues, accountability, corruption and governance issues.
- 5.6. Kictanet⁴⁹ reported that the Kenyan government implemented an internet shutdown⁵⁰ despite assurances from the Communications Authority of Kenya (CA) that Internet access would not be restricted during the #RejectFinanceBill2024 protests. This shutdown that lasted for close to 12 hours violated provisions of the Constitution of Kenya and international human rights law.⁵¹
- 5.7. On 17th July 2024 the Communications Authority of Kenya in a letter to newsrooms, cautioned them against broadcasting content surrounding the ongoing anti-government protests that it says violates the Constitution.⁵² CA insisted that media houses were to strictly adhere to the provisions of Articles 33 (2) and 34 (1) of the Constitution, the Kenya Information and Communications Act, 1998, the Programming Code for Broadcasting Services, as well as the Preservation of the Public Security Act, 2012.⁵³ On 28th June 2024, the Kenya Television Network (KTN) was threatened to stop airing the protests or risk being

⁴⁷ ‘Anti-IMF loan crusader Mutemi Kiama freed on bail’ <https://nation.africa/kenya/news/anti-imf-loan-crusader-mutemi-kiama-freed-on-bail-3353674> Accessed on 1st October 2024.

⁴⁸ ‘How slain Meru blogger ‘Sniper’ was lured to his death’ <https://www.standardmedia.co.ke/national/article/2001494743/how-slain-meru-blogger-sniper-was-lured-to-his-death> Accessed 1st October 2024.

⁴⁹ Network provides mechanisms and a framework for continuing cooperation and collaboration in ICT matters among industry, technical community, academia, media, development partners and Government.

⁵⁰ Urgent Concerns Regarding Internet Shutdown in Kenya during the #RejectFinanceBill2024 demonstrations <https://www.kictanet.or.ke/urgent-concerns-regarding-internet-shutdown-in-kenya-during-the-rejectfinancebill2024-demonstrations/>

⁵¹ <https://www.kictanet.or.ke/urgent-concerns-regarding-internet-shutdown-in-kenya-during-the-rejectfinancebill2024-demonstrations/>

⁵² ‘Communications Authority cautions media to be responsible in coverage of protests’ <https://www.citizen.digital/news/communications-authority-warns-kenyan-media-over-coverage-of-anti-govt-protests-n346101> Accessed 1st October 2024.

⁵³ As above.

shut down.⁵⁴

6.0. Recommendations to the government of Kenya

Defenders Coalition, Social Justice Centres Working Group, Coalition for Grassroot Human Rights Defenders, Protection International - Africa, Kenya Human Rights Commission, Pema Kenya, The Gay and Lesbian Coalition of Kenya (galck+), Universal Rights Group, Ogiek People's Development Programme and Women Empowerment and Mentor All calls on the Government of Kenya to:

6.1. Create and maintain, in law and in practice, a safe and enabling environment for HRDs including civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders, and Human Rights Council resolutions 22/6, 27/5, and 27/31.

6.2. Guarantee freedoms of association, peaceful assembly, and expression, and the right to operate free from unwarranted state interference. In the light of this, the following specific recommendations are made:

6.3. Regarding freedom of association

- Ensure that the Public Benefits Organizations Act of 2013 and the Community Groups Registration Act of 2002 are not weaponised against civil society, human rights defenders and community-based organisations and should be implemented in a progressive holistic manner;
- End the practice of unwarranted raids on CSOs and unjustifiable disruptions of their activities. Any search operations should be authorised by a court order, in accordance with due process.

6.4. Regarding protection of human rights defenders

- Provide civil society members, HRDs, and journalists with a safe and enabling environment in which to carry out their work free from hindrance and insecurity. Conduct impartial, thorough, swift, effective, and transparent investigations into all cases of attacks, harassment, and intimidation, and bring the perpetrators to justice in fair trials;
- Adopt a specific law on the protection of HRDs, in accordance with Council resolution 27/31 of the Human Rights Council; and
- Recognise the important contributions of HRDs and refrain from criminalising their work.

6.5. Regarding freedom of expression and access to information

⁵⁴ <https://www.kenyaeditorsguild.org/kmswg-statement-on-attacks-on-journalists-and-media-shutdown-threats-during-finance-bill-2024-protests/>

- Respect the right to freedom of expression and ensure that censorship is limited to exceptional cases, in line with the limitations provided under Article 33 (2) of the Constitution of Kenya and Article 19(3) of the ICCPR; and
- Cease the targeting and harassment of journalists and other critical voices in the country and publicly desist from any negative discourse on civil society, HRDs, and journalists.

6.6. Regarding freedom of peaceful assembly

- Kenya to consider not to pass the Assembly and Demonstrations Bill, 2024 as it proposes undue restrictions on the freedom of assembly, violates constitutional rights and international human rights instruments. Instead, the government should engage in meaningful dialogue with civil society organizations and human rights defenders to craft laws that protect, rather than hinder, the right to peaceful assembly and free expression.
- Ensure that public rhetoric supports and respects fundamental freedoms, promptly condemn and address harmful rhetoric and promote alternative narratives to prevent the portrayal of individuals and groups exercising their fundamental freedoms – including non-violent acts of civil disobedience – as threats or criminals, by both State and non-State actors as indicated by the Special Rapporteur on the rights to freedom of peaceful assembly and of association in the 2024 annual report A/79/263;
- Review and update existing human rights training for police and security forces to foster a more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms, and instruct law enforcement and security agents to cease the use of excessive force against peaceful demonstrators;
- Adopt best practices on the freedom of peaceful assembly set out by the UN Special Rapporteur on the rights to freedom of peaceful assembly and association in his 2012 annual report, which calls for procedures in which there is simple notification of assemblies being held, rather than explicit permission being needed to assemble; and
- Publicly condemn the use of excessive and brutal force by security forces to disperse protests, launch an effective investigation into such instances, and bring the perpetrators of abuses to justice in fair trials.