

1. Introduction

- 1.1 DefendDefenders (The East and Horn of Africa Human Rights Defenders Project) is a regional civil society organisation (CSO) established in 2005 and based in Kampala, Uganda. It seeks to strengthen the work of human rights defenders (HRDs) throughout the East and Horn of Africa sub-region by reducing their vulnerability to the risk of persecution and by enhancing their capacity to effectively defend human rights. DefendDefenders focuses its work on Burundi, Djibouti, Democratic Republic of Congo, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (and Somaliland), South Sudan, Sudan, Tanzania, and Uganda.
- 1.2 National Coalition of Human Rights Defenders - Kenya (Defenders Coalition), is a Kenyan CSO established in 2007. It works to strengthen the capacity of HRDs to work effectively and reduce their vulnerability to the risk of persecution, including by advocating for a favorable legal and policy environment in Kenya.
- 1.3 In this submission, DefendDefenders and Defenders Coalition evaluate the Government of Kenya's implementation of recommendations received and accepted during the third UPR cycle, in 2020. The report assesses Kenya's international human rights obligations to foster a safe and supportive environment for HRDs including civil society. It specifically analyses Kenya's performance in upholding the rights to freedom of association, peaceful assembly, and expression, and offer specific, action-oriented follow-up recommendations.
- 1.4 During its third UPR, the Government of Kenya received 320 recommendations, including 13 related to freedoms of association, expression, and peaceful assembly.ⁱ Kenya accepted all 13 recommendations. 11 concerned HRDs and CSOs, eight freedom of expression, seven freedom of association, and two peaceful assembly (with some concerning several issues). A thorough evaluation of legal sources, media reports, and human rights documentation, elaborated upon below, demonstrate that the Government of Kenya has only partially implemented these recommendations.
- 1.5 The government's efforts to ensure accountability for violations against HRDs have been insufficient. HRDs continue to face harassment, intimidation, and violence, with inadequate mechanisms in place to protect them and hold perpetrators accountable. A safe and enabling environment for HRDs and CSOs remains to be established and maintained. CIVICUS ranks Kenya's civic space as "obstructed." Restrictions to protests remain a major concern, with incidents of disruption reported in each of the country's updates throughout the year.ⁱⁱ Despite the government's nominal support for most recommendations, tangible progress in creating a protective and supportive framework for the protection of these rights has been minimal. The continued presence of legal and societal barriers undermines their full implementation, highlighting a significant shortfall in Kenya's commitment to upholding international human rights standards.

1.6 We are deeply concerned over the excessive use of force in response to protests, extrajudicial killings, enforced disappearances, targeted arrests, assaults on journalists, and restrictions on media coverage, all of which undermine the fundamental principles of a free and democratic society and the freedoms of expression, press, association, and peaceful assembly.

- Section 2 examines Kenya's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association.
- Section 3 examines Kenya's implementation of UPR recommendations and compliance with international human rights standards related to freedom of peaceful assembly.
- Section 4 examines Kenya's implementation of UPR recommendations and compliance with international human rights standards related to the protection of HRDs, including civil society and journalists.
- Section 5 examines Kenya's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of opinion and expression.
- Section 6 contains recommendations to address concerns raised and to advance implementation of recommendations under the third UPR cycle.
- Annex 1 contains an assessment of accepted recommendations on freedom of association, expression, peaceful assembly, and HRDs under the third cycle of the UPR.

2. Freedom of Association

- 2.1 During Kenya's third UPR, the government received seven recommendations concerning freedom of association, all of which were accepted.ⁱⁱⁱ Article 36 of Kenya's Constitution guarantees every person the right to freedom of association, including the ability to establish, join, or participate in any association. It also ensures that associations have the right to a fair hearing and protection from unjust cancellation. Additionally, Articles 2(5) and 2(6) incorporate general principles of international law, treaties, and conventions ratified by Kenya into domestic law, including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights (ICCPR), which safeguard freedom of association. However, despite these legal guarantees, violations continue.
- 2.2 The Community Groups Registration Act No. 30 of 2022 requires community-based organisations, including social justice centers, to register under a regulatory framework designed for their registration and regulation.^{iv} While the Act aims to create a structured approach to governance for these organisations, it raises significant concerns regarding the potential infringement on freedom of association.
- 2.3 The Act's provisions, particularly Sections 3, 12, 15, 32, and 33, grant the Director of Social Development excessive power over community-based organisations. This concentration of authority risks interfering with the activities and objectives of these organisations, ultimately undermining their independence and effectiveness. By compelling organisations to align their objectives with government mandates, the Act could stifle diverse voices and hinder critical advocacy work.
- 2.4 For example, on 15 August 2023, the Mathare Social Justice Centre received a letter from the sub-county social officer indicating that its human rights protection activities did not align with the objectives outlined in the Act, requiring the center to amend its objectives accordingly.^v Similarly, on 2 August 2024, Angaza Jamii, a community-based organization in Kisumu, was asked by the Kenya Revenue Authority to submit various documents, including a tax exemption certificate and audited accounts. Sitarusha Mawe Tena received a similar request on 5 August 2024. These incidents, occurring in the context of heightened government scrutiny following national protests, exemplify the challenges community-based organisations face under this legislation, as they navigate increasing regulatory pressures that threaten their ability to operate freely.

- 2.5 The Supreme Court of Kenya's ruling to uphold the registration of the National Gay & Lesbian Human Rights Commission (NGLHRC) as an NGO represents a commendable step towards recognising the rights of individuals working on sexual orientation, gender identity and expression (SOGIE). However, significant challenges persist as this community continues to face significant challenges.^{vi} Following the ruling, authorities criticized same sex marriage creating a hostile environment for SOGIE individuals. The situation is exemplified by alarming incidents of state-sanctioned discrimination. For instance, in 2021, authorities in Nairobi arrested several individuals at a private gathering without charges.^{vii}
- 2.6 While we welcome the implementation of the Public Benefits Organizations (PBO) Act signed into law in 2013 and gazetted on 14 May 2024 as a significant step toward establishing a transparent framework for the registration and regulation of civil society, NGOs continue to face substantial challenges.^{viii} Despite this progress, all organizations, including those previously registered under the repealed NGO Coordination Act, are required to register afresh under the PBO Act within one year of its commencement. However, the Act is yet to be fully operational.
- 2.7 The PBO Act mandates that all activities must align with public benefit objectives outlined in Section 2.^{ix} On the contrary, this requirement poses a significant challenge, as CSOs may be compelled to modify their activities, potentially undermining their core mandates and objectives. Furthermore, the Act subjects CSOs to increased scrutiny, especially regarding finances, as detailed in Sections 30 and 31.
- 2.8 In a related move, the government accused CSOs of funding and organising protests through grants from the Ford Foundation.^x On 18 July 2024, the Principal Secretary in the Ministry of Foreign and Diaspora Affairs wrote to the Ford Foundation, listing 16 CSOs as beneficiaries of its grants and requesting detailed information about their expenditures, activities, and beneficiaries.^{xi} This action appears to target civil society by questioning the legitimacy of their funding sources and activities, potentially undermining their role in advocating for democratic principles and human rights.

3. Freedom of peaceful assembly

- 3.1 During Kenya's third UPR, the government accepted two recommendations regarding the freedom of peaceful assembly. Article 37 of the Kenyan Constitution guarantees every individual's right to assemble, demonstrate, picket, and present petitions to public authorities, provided these actions are conducted peacefully and unarmed, without fear of repression. Additionally, Articles 2(5) and 2(6) integrate international law, treaties, and conventions ratified by Kenya into domestic law, thereby safeguarding peaceful assembly in accordance with standards like the ICCPR, which guarantees this freedom in Article 21.
- 3.2 However, despite a revision of the Penal Code in 2021, there remains a critical need to repeal outdated provisions that are not human rights compatible. Sections 78 and 79 address unlawful assembly, while Section 95 pertains to threatening a breach of peace. These sections are frequently misused by law enforcement to threaten, intimidate, or harass CSOs and HRDs. Even as most HRDs comply with legal requirements, authorities often criminalize their activities and undermine the right to peaceful assembly.
- 3.3 Although laws guarantee the right to assembly, including to demonstrate and petition, on the contrary, the government continues to interfere in peaceful assembly. Incidents reveal inconsistent application of state commitments, with police use of teargas against citizens exercising their rights to peaceful protests and free speech. Police repeatedly use excessive force, characterized by militarization, during peaceful protests, against unarmed civilians.^{xii}
- 3.4 On 18 June 2024, over 300 citizens, including HRDs and journalists, were arrested during peaceful protests and over 200 injured across Kenya.^{xiii} Security forces used tear gas, water cannons, rubber bullets, and live ammunition against protesters, causing injuries and at least one death. The use of live bullets against unarmed civilians not only endangers lives but also instills fear among the public, creating a chilling effect.

- 3.5 On 25 June 2024, violence erupted on the margins of protests in Nairobi, Nakuru and a few other counties. Human rights observers reported multiple incidents of violations, including attacks on medical personnel, lawyers, and journalists, as well as the targeting of peaceful protesters and safe spaces like churches and medical emergency centers.^{xiv} Police officers were observed shooting at the Holy Basilica medical emergency center and obstructing the evacuation and treatment of the injured. The deployment of plain-clothed police officers in unidentified vehicles further worsened the situation. Reports from the Kenya National Human Rights Commission documented 21 fatalities, mostly caused by live bullets, including directed at the head, and 336 injuries among protesters and police officers.^{xv} Abductions and arbitrary arrests, including those of doctors and lawyers, were reported, with some victims taken from their homes in the early hours and held in unofficial detention centers.^{xvi}
- 3.6 Additionally, on 3 July 2024, in response to protests against the controversial Finance Bill of 2024, police arrested more than 270 protestors, including minors, and held them without food in various Nairobi police stations.^{xvii} This incident highlights concerns about the treatment of detainees and the suppression of peaceful protests.
- 3.7 During the annual "Saba Saba" protest on 7 July 2023, police dispersed a mass rally led by opposition figures using tear gas, and at least one protester was fatally shot in Kisumu.
- 3.8 On 17 July 2024, the police issued a statement banning any planned peaceful protests and termed any such assemblies unlawful.^{xviii} These actions reveal a troubling pattern of repression that contradicts the government's commitments to fulfill the constitutional right to peaceful assembly.

4. Intimidation, and attacks on Human Rights Defenders

- 4.1 During Kenya's third UPR, in 2020, the government accepted 11 recommendations aimed at protecting civil society activists and HRDs. Despite these commitments, the implementation of these recommendations has been inadequate, with HRDs continuing to face significant challenges. Threats, intimidation, and unwarranted attacks on CSOs and HRDs persist, often involving state actors or individuals under their influence.
- 4.2 The government's failure to fully implement the accepted UPR recommendations is evident in the lack of progress on several critical fronts. For instance, there has been no significant advancement in ensuring accountability for violations against HRDs. Cases of harassment and violence against activists remain largely uninvestigated, and perpetrators are rarely brought to justice. The failure to address violations perpetuates a culture of impunity and increases the risks faced by HRDs and CSOs. These groups play a crucial role in safeguarding human rights and fundamental freedoms as outlined in the Constitution and various regional and international instruments. Unfortunately, their efforts are often met with hostility. Incidents highlighted below illustrate the severity of the situation.
- 4.3 On 20 July 2022, police in Malindi arrested four HRDs focusing on SOGIE for "illegally assembling."^{xix} The targeted arrest of these HRDs, despite the venue hosting other meetings, suggests a discriminatory application of the law. This action undermines Kenya's commitment to provide a safe and enabling environment for HRDs, including investigating attacks.
- 4.4 Similarly, on 7 July 2023, police arrested three lawyers for demanding the unconditional release of 32 peaceful protestors who were arrested for participating in the Saba Saba protests.^{xx} The unlawful detention of the lawyers advocating for the rights of these protestors not only undermines the rule of law but also infringes on the legal profession's fundamental role in defending human rights and ensuring access to justice.
- 4.5 HRDs in the regions of Baringo, Samburu, Elgeyo Marakwet, West Pokot, and Turkana face increasing attacks due to their human rights work. In 2024, bandits murdered peace ambassadors Eliud Kipkeu, Patrick Komen, and Joseph Suter from Baringo County while they promoted peace between two conflicting ethnic groups.
- 4.6 In a similar incident, on 9 February 2024, over seven armed individuals brutally attacked Chris Owalla, an HRD focused on social and environmental justice, as he left the funeral of local journalist Dickens Ochieng Wasonga.^{xxi} This attack is believed to be connected to his earlier complaints about the County Government of Siaya's mismanagement of public funds. The failure to hold the perpetrators accountable undermines the broader environment in which HRDs operate.

- 4.7 In a separate incident, on 15 July 2021, assailants shot and killed Johanna Stutchbury, a woman human rights defender, environmentalist, and conservationist, at her home.^{xxii} Stutchbury had previously participated in protests against the grabbing and destruction of a local forest. Despite a presidential decree for thorough investigations, her murder remains unsolved.
- 4.8 Furthermore, on 19 August 2024, HRDs Bob Njagi, Jamil Longton, and his brother Aslam Longton were forcibly disappeared. Eyewitnesses reported that assailants physically assaulted them and forcibly bundled them into a private car that sped off. Their phones were immediately switched off, and 31 days later, the abductors dumped them by a roadside in Nairobi. During their disappearance, the three endured incommunicado detention and reportedly suffered both physical and psychological torture.^{xxiii}

5. Freedom of opinion and expression

- 5.1 Article 33 of the Kenyan Constitution and Article 19 of the ICCPR guarantee the right to freedom of expression, including press freedom. Article 34 specifically safeguards freedom of the media, ensuring journalists and media organisations operate independently and report without undue interference. During its third UPR, Kenya accepted eight recommendations related to freedom of expression and pledged to uphold these rights in both legislation and practice.
- 5.2 Despite constitutional guarantees, the government has misused the Computer Misuse and Cyber Crimes Act to discredit, threaten, and intimidate HRDs, including bloggers and journalists. This misuse discourages them from advocating for human rights and raising critical issues. Sections 22 and 23 of this law are commonly abused. Section 22 penalises false publications with a fine of up to five million Kenyan Shillings (approx. 40,000 US dollars) or imprisonment for up to two years, or both. Section 23 addresses the publication of false information, with penalties of up to ten years in prison, a fine of up to five million shillings, or both. These provisions are often leveraged to silence dissent, thereby undermining freedom of expression.^{xxiv} 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.^{xxv}
- 5.3 Despite accepting recommendations to protect freedom of expression and the media, the government continues to employ restrictive measures and punitive actions against journalists, media outlets, assaults on individuals documenting state actions. The restrictive legislative measures clearly contradict and reveals a stark disconnect between Kenya's international obligations and its domestic practices.
- 5.4 For instance, on 11 June 2020, HRD and blogger Mutemi wa Kiama was arrested and charged under Section 22 of the Computer Misuse and Cyber Crimes Act.^{xxvi} On 6 April 2021, he faced another arbitrary arrest under the same charges, with his case still pending before the courts.
- 5.5 Additionally, in April 2023, the Kenya Media Sector Working Group (KMSWG) reported an increasing number of journalists being harassed, attacked, and arrested while covering mass anti-government protests in Kenya.^{xxvii}
- 5.6 Moreover, in March 2023, the government threatened to revoke the broadcast licenses of six media outlets for their coverage of anti-government protests.^{xxviii} Such actions undermine the constitutional guarantee of press freedom and highlight a pattern of state interference that poses significant threats to journalistic independence and freedom of expression. In February 2024, officers from the Ethics and Anti-Corruption Commission assaulted journalist Osinde Obare while he filmed an incident of police corruption.^{xxix} This runs counter to Kenya's commitment to align NGO laws with the right to freedom of expression.

- 5.7 Furthermore, in 2024, during police crackdowns on protests, authorities threatened media outlets like Kenya Television Network (KTN) to halt their live coverage of the events.^{xxx} The government also disrupted internet services, severely undermining the media's ability to report freely. Additionally, in January 2024, police assaulted and arrested HRD Millian Nyamoita for documenting police brutality.^{xxxi} These actions highlight the ongoing risks faced by those exercising their right to freedom of expression and intimidation that contradicts the fundamental principles of a free and democratic society.

6. Recommendations to the government of Kenya

6.1 Freedom of association

- Uphold civil and political rights, particularly the freedom of association for all individuals, including those within the SOGIE community, without discrimination or harassment.
- Instruct law enforcement agencies to cease harassment, arbitrary arrests, and detention of individuals based on their sexual orientation gender identity.
- Fully operationalise the PBO Act of 2013 and provide a transparent and supportive framework for the registration and regulation of civil society organisations.

6.2 Protection of human rights defenders, including civil society activists, and journalists

- Investigate and prosecute those responsible for attacks, harassment, and intimidation against HRDs.
- Conduct comprehensive training for law enforcement officials on safeguarding HRDs and upholding their rights.
- Expedite the adoption and enforcement of laws that provide robust protection for HRDs, including the establishment of an independent oversight body to monitor and report on government compliance with international human rights obligations in accordance with Council resolution 27/31 of the Human Rights Council.
- Review and amend existing laws and regulations that restrict the operations of CSOs and ensure that legal frameworks align with international human rights standards to promote a free and enabling environment for CSOs to operate.
- Integrate the outcomes of the Universal Periodic Review into actionable plans to promote and safeguard all human rights, in consideration of recommendations from civil society.

- Safeguard the rights of CSOs to advocate on various issues, including SOGIE rights, without fear of discrimination, reprisals, or censorship to ensure that CSOs can freely address issues affecting marginalized communities.
- Create platforms for regular consultations and collaborations to foster a constructive dialogue between the government and civil society, to CSOs to participate meaningfully in policy-making processes and ensure their voices and concerns are heard and addressed.

6.3 Freedom of expression, media freedom and access to information

- Amend national legislation in line with international standards to guarantee freedom of expression, and ensure new legislation conforms to international human rights norms. Immediately cease internet shutdowns and disruptions, especially during protests to ensure the internet remains accessible to access and disseminate information.
- Implement robust measures to safeguard journalists from threats, assaults, and arbitrary arrests, ensuring they can work freely without fear of reprisals for documenting state actions, expressing critical opinions, or covering sensitive topics.
- Investigate and hold accountable those who perpetrate violence against journalists.
- Adopt a comprehensive law on access to information.

6.4 Freedom of peaceful assembly

- Conduct an independent and thorough investigation into the use of excessive force against protestors and ensure accountability for those responsible.
- Adhere to Article 37 of the Kenyan Constitution, which guarantees the right to peaceful assembly, and ensure riot control measures, such as tear gas and water cannons, are only used when necessary and in a proportionate manner.
- Refrain from using riot control measures, such as tear gas and water cannons, in confined spaces like residential areas.
- Safeguard Article 37 of the Constitution by reviewing the proposed Assemblies and Demonstrations no 28 of 2024 to ensure that it guarantees the freedom of assembly.

ⁱ OHCHR, “Thematic list of recommendations,” 23 January 2024, <https://www.ohchr.org/en/hr-bodies/upr/ke-index>, accessed on 28 September 2024.

ⁱⁱ Ibid

ⁱⁱⁱ OHCHR, “Thematic list of recommendations,” 23 January 2020, <https://www.ohchr.org/en/hr-bodies/upr/ke-index>, accessed on 28 September 2024.

^{iv} Republic of Kenya, “CommunityGroupsRegistrationAct,” 2022, <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>, accessed on 28 September 2024.

^v Mathare Social Justice Centre, “Community Groups Registration Act (2022) — Grassroots Deliberations,” 12 October 2023, <https://www.matharesocialjustice.org/social-justice-centres/workshop-on-the-community-groups-registration-act/>, accessed on 28 September 2024.

^{vi} CIVICUS, “Landmark judgment affirms the rights to association and equality,” <https://monitor.civicus.org/explore/landmark-judgment-affirms-the-rights-to-association-and-equality/>, accessed on 28 September 2024.

^{vii} *Voice of America*, “Kenya’s LGBTQ Community Faces Increased Abuse During Pandemic,” 24 November 2020, https://www.voanews.com/a/africa_kenyas-lgbtq-community-faces-increased-abuse-during-pandemic/6198757.html, accessed on 28 September 2024.

^{viii} CIVICUS, “Progressive CSO law finally takes effect, 11 years later,” <https://monitor.civicus.org/explore/progressive-cso-law-finally-takes-effect-11-years-later/>, accessed on 28 September 2024.

^{ix} Capital FM, “Kenya Calls on NGOs and PBOs to Align Operations with President Ruto’s Development Agenda” September 2023, <https://www.capitalfm.co.ke/news/2023/09/kenya-calls-on-ngos-and-pbos-to-align-operations-with-president-rutos-development-agenda/> accessed on 28 September 2024.

^x Citizen, “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>, accessed on 28 September 2024.

^{xi} Capital FM, “Govt formally writes to Ford Foundation over role in recent chaos” July 2024, <https://www.capitalfm.co.ke/news/2024/07/govt-formally-writes-to-ford-foundation-over-role-in-recent-chaos/> accessed on 28 September 2024.

^{xii} Amnesty International, “Freedom of expression,” <https://www.amnestykenya.org/freedom-of-expression/>, accessed on 28 September 2024.

^{xiii} X, Defend Defenders, <https://x.com/DefendDefenders/status/1804161238114463892>, accessed on 28 September 2024.

^{xiv} X, Defend Defenders, <https://x.com/DefendDefenders/status/1804161238114463892>, accessed on 28 September 2024.

^{xv} X, “KNCHR,” 26 June 2024, <https://twitter.com/HakiKNCHR/status/1805986565363261469>, accessed on 28 September 2024.

^{xvi} KHRC, “Ruto regime must end repression of peaceful protestors,” 24 June 2024, <https://khrc.or.ke/press-release/finance-bill-2024-ruto-regime-must-end-repression-of-peaceful-protesters/>, accessed on 28 September 2024.

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- ^{xviii} Star, “No demonstrations allowed in Nairobi CBD on Thursday, says Police’ 17 July 2024, <https://www.the-star.co.ke/news/realtime/2024-07-17-no-demonstrations-allowed-in-nairobi-cbd-on-thursday-says-police/> accessed 28 September 2024
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