

Kenya's 2nd UPR Cycle

Situation of Human Rights Defenders in Kenya

10th December 2019

Statement by NATIONAL COALITION OF HUMAN RIGHTS DEFENDERS-KENYA (Defenders Coalition)

On behalf of the Defenders Coalition, which is the National Coalition of Human Rights Defenders in Kenya, I thank the Organizers of this Pre-session for this opportunity to raise some of the key human rights defenders concerns from Kenya.

During its second UPR cycle, the Government of Kenya received 11 recommendations related to HRDs, including CSOs and one on peaceful assembly. We are particularly concerned that the legitimate role of protection and promotion of human rights carried on by human rights defenders and Civil Society Organizations is criminalized and target for reprisal by both state and non-state actors.

The Defenders Coalition has noted the following challenges since Kenya's 2nd UPR cycle:

- ***Violations of Freedom of Peaceful Assembly***; Human Rights Defenders more than often use demonstrations as a form of expression. However, state officials have routinely denied or prohibited peaceful assemblies through banning of scheduled protests, arrests of protesters and use of excessive force on protestors resulting to injuries and deaths. During its second UPR review, Kenya accepted one recommendation “to [...] guarantee peaceful assembly of journalists, activists and participants in demonstrations.”¹ Article 37 of the Constitution protects the right “peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.” However, as evidenced below, the government has failed to realise this recommendation adequately.
 - i. On 5 November 2018, students from Maseno University protesting against the detention of their colleagues were harassed following an altercation with the police. The students alleged that the law enforcement officers harassed them as they sought to file a police report.² Later that day, a video and pictures circulated on social media showed protesters posing no immediate threat to public order or the security of persons being beaten and mistreated by security officers
 - ii. Serious violations of the right to freedom of peaceful assembly were witnessed during the 2017 presidential elections. Positively, on 13 February 2019, the

¹ A/HRC/29/10 para 149.129 (Uruguay)

² Nairobi News, “Police condemned for brutality on varsity students,” 5 November 2018, <https://nairobi.news.nation.co.ke/news/police-condemned-for-brutality-on-varsity-students-video>, Accessed 11 July 2019.

Magistrate Court found five top police commanders accountable for the death of a six-month old toddler during the August 2017 post-election violence in Western Kenya.³

- iii. In March 2019, a Bill to amend the Public Order Act (2014) was tabled in the Kenyan National Assembly.⁴ The new Bill has been criticised for imposing undue restrictions on the right to peaceful assembly, and for disproportionately punishing protest organisers. Section 5 of the Public Order Act is often misinterpreted by the police as a request for permission to organise a protest, as opposed to notification of the intention to protest, transforming the legal regime from a notification regime to a *de facto* authorisation regime.
 - iv. On 30 April 2019, police used tear gas to disperse protestors who had gathered at Uhuru Park in Nairobi to protest against widespread corruption. The security officer in charge of Nairobi central police station cautioned protesters that “there will be no marching outside Uhuru Park.”⁵
 - v. On 19 June 2019, two HRDs were arrested while taking part in a peaceful demonstration in solidarity with the people of Sudan. The arrests occurred despite the fact that the HRDs had notified the central police station of their intention to protest and requested for security. Two months earlier, woman HRD Beatrice Waithera was arrested while participating in an anti-corruption protest in Nairobi.
- ***Threats to Freedom of Association:*** the government continues to interfere in the operations of NGOs. On 16 August 2017, the Kenya Revenue Authority (KRA), accompanied by Kenyan police officers, attempted to enter the offices of the Africa Centre for Open Governance (AfriCOG) without notice and with a defective search warrant. The attempted raid came two days after AfriCOG, together with the Kenya Human Rights Commission (KHRC), were served with a notice of deregistration by the NGO Coordination Board.
 - **Harassment, intimidation, and attacks against human rights defenders, civil society activists.**
 - i. Defenders Coalition documented over 50 cases of harassment and intimidation against HRDs.⁶ Between January and December 2016, 12 fatalities were recorded when police officers used live ammunition to violently disperse

³ Voice of America, “Kenya police found liable in death of baby during post election violence,” 14 February 2019, <https://www.voanews.com/africa/kenya-police-found-liable-death-baby-during-post-election-violence>, Accessed 12 July 2019.

⁴ The Star, “Amendment to the Public Order Act in bad taste, must be treated with contempt it deserves,” 29 April 2019, <https://www.the-star.co.ke/siasa/2019-04-27-amendment-to-public-order-act-in-bad-taste-must-be-treated-with-contempt-it-deserves/>, Accessed 11 July 2019.

⁵ CIVICUS Monitor, “Dispersal of protests continues to be a major challenge to peaceful assembly,” 23 May 2019, <https://monitor.civicus.org/newsfeed/2019/05/23/dispersal-protests-continues-be-major-challenge-peaceful-assembly/>, Accessed 11 July 2019.

⁶ NCHRD-K, “Election Monitoring Report on the Situation of HRDs, Election Monitors and Journalists During the 2017 Elections in Kenya,” <http://nchrk.org/nchrk-ks-summarised-elections-findings/>, Accessed 7 July 2019.

protesters and HRDs.⁷ From January 2016 to April 2019, NCHRD-K received over 30⁸ cases of threats and harassment of HRDs, including over 36 cases of arbitrary arrests, and 10 cases of forced evictions of lesbian, gay, bisexual, and transgender (LGBT) HRDs.

- ii. Between January 2016 to September 2019, Defenders Coalition has documented 3 cases of HRDs killed in their line of duty. They include the Mavoko 3 (Willie Kimani, Joseph Muiruri and Josephat Mwenda), ⁹Evans Njoroge (Student Activist), ¹⁰Esther Mwikali (land rights activist) and ¹¹Robert Kirotych (Sengwer Indigenous community).
- iii. HRDs experienced attacks during the 2017 electoral periods. Human Rights Watch reported that from August 2017-March 2018, police targeted at least 15 activists in Nairobi and Kisumu. Intimidation tactics ranged from threats of arrests and restrictions on freedom of expression, to confiscation of equipment.¹² According to a 15 October 2017 joint report by Amnesty International and Human Rights Watch, police killed at least 33 people, possibly as many as 50, and injured hundreds during repressions of protests that followed the 8 August elections in some opposition strongholds in parts of Nairobi.¹³ The report "Mirage at Dusk" by the Kenya National Human Rights Commission documented 37 deaths due to police use of excessive force at opposition protests.¹⁴

PROGRESS:

Since the last UPR review, the Government has partially implemented the recommendations it accepted to implement. Other than public pronouncements by the investigative agencies (Office of the Director of Public Prosecutions and Director of Criminal Investigations) at human rights forums, the government has not intensified its efforts to ensure decriminalization

⁷ Ibid.

⁸ Ibid.

⁹Defenders Coalition, "Press release on the Killing of Evans Njoroge," <https://defenderscoalition.org/press-release-on-the-killing-of-evans-njoroge/> Accessed 9 September 2019

¹⁰ Defenders Coalition, "Press statement on the international day of victims of enforced disappearances," <https://defenderscoalition.org/press-statement-on-the-international-day-of-victims-of-enforced-disappearances/> Accessed 9 September 2019

¹¹ Amnesty International, "Excessive force and evictions leads to killings of the Sengwer community in Embobut Forest," 17 January 2018, <https://www.amnestykenya.org/excessive-force-evictions-leads-killings-sengwer-community-embobot-forest/>, Accessed 10 July 2019.

¹² Human Rights Watch, "Kenya: Police threaten activists reporting abuse," 4 June 2018, <https://www.hrw.org/news/2018/06/04/kenya-police-threaten-activists-reporting-abuse>, Accessed 10 July 2019.

¹³ Human Rights Watch, "Kill Those Criminals: Security Forces Violations in Kenya's August 2017 Elections," 15 October 2017, <https://www.hrw.org/report/2017/10/15/kill-those-criminals/security-forces-violations-kenyas-august-2017-elections>, Accessed 15 July 2019.

¹⁴ Kenya National Human Rights Commission, "Mirage at Dusk," October 2017, <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/MIRAGE%20AT%20DUSK%20-%20A%20Human%20Rights%20Account%20of%20The%202017%20General%20Election.pdf.pdf?ver=2017-10-09-130024-457>, Accessed 15 July 2019.

of HRDs and recognition of their work. On 22 June 2018, the office of the Director of Public Prosecutions, through a letter to the Director of Criminal Investigations and Witness Protection Agency, requested the protection of HRDs advocating against lead poisoning in the Owino Uhuru slums (Mombasa).

RECOMMENDATIONS

In light of these updates and observations, we urge the Government of Kenya to:

1. 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;
2. Adopt a specific law on the protection of HRDs, in accordance with Council resolution 27/31 of the Human Rights Council; and
3. Recognise the important contributions of HRDs and refrain from criminalising their work.
4. Review and Reform existing policies and laws and adopt new legislation that provides an environment for human rights defenders to work freely and safely without communication surveillance.