

In its last Universal Periodic Review in May 2010, Kenya accepted all twelve recommendations made in relation to the right to freedom of expression and the protection of human rights defenders (HRDs), including a recommendation to review national legislation to ensure freedom of expression, and a recommendation to investigate attacks against HRDs. Regrettably, these recommendations have not been adequately implemented, as evidenced by the disappearance, murder and harassment of HRDs, journalists and lawyers following the presidential elections in 2013. Despite Kenya accepting a recommendation regarding full cooperation with the International Criminal Court and ‘the protection of witnesses from intimidation and violence’, there have been a number of attacks against persons cooperating with the ICC in relation to the investigation of alleged crimes by President Kenyatta and Deputy President Ruto, among others, during the post-election crisis in 2007/08.

1. Risks facing human rights defenders

- Human rights defenders in Kenya face worsening attacks and threats, with the African Commission’s Special Rapporteur on Human Rights Defenders documenting a number of cases of violations against HRDs in the country in her most recent report. These violations included cases of attempted murder, arbitrary arrests, threats and judicial intimidation.¹
- A number of killings and other grave human rights violations against HRDs have been documented by civil society organisations. These cases include: the killing of Hassan Ali Guyo by an army officer in 2013 as he documented the use of excessive force and other human rights violations against demonstrators in the Marsabit County;² the unlawful detention and assault of Muchangi Nyaga, a HRD working in the Huruma slums in Nairobi;³ and the murder of human rights lawyer Peter Wanyonyi Wanyama, shot dead outside his home in September 2013. Following Wanyama’s murder, the Law Society of Kenya expressed concern at serious threats made against two other lawyers in Bungoma.⁴
- Journalists documenting violations face similar threats as HRDs, with Freedom House reporting that 28 journalists were threatened or attacked in 2013.⁵

2. Official restrictions on the space for human rights defenders

- Foreign funding is crucial for NGOs in Kenya.⁶ In this regard, the African Commission on Human and Peoples’ Rights has expressed serious concern about the 15 per cent budget limit set by law on the receipt of foreign funding by NGOs. This limitation is incompatible with the rights to freedom of expression and association and substantially restricts the capacity and activities of some NGOs.⁷ The ACHPR has also expressed concern at the wide discretion afforded to authorities in terms of the registration and regulation of NGOs on the basis that such discretion ‘may result in the abuse of power when implementing the law’.⁸
- In 2013, parliament passed the Kenya Information Communication Amendment Bill 2013 and the Media Council Bill 2013, which severely restrict freedom of the press and appear incompatible with Articles 33, 34 and 35 of the constitution (which guarantee free speech and media freedom).⁹ Under the laws, a Communications and Multimedia Appeals Tribunal has the power to impose heavy fines for journalists and media houses, to recommend the de-registration of journalists, and to make orders which severely limit the right to freedom of expression.¹⁰

3. Intimidation and reprisals against defenders accessing international human rights mechanisms

- HRDs fighting against impunity, witnesses of crimes committed in 2007/2008, and those supporting the ICC in the investigations of the post-electoral crisis suffer from reprisals, harassment and witness tampering by.¹¹
- In September 2013, the UN Special Rapporteur on freedom of peaceful assembly and association, Maina Kiai, was subject to harassment and defamation, being labelled part of ‘evil society’¹² in the media and receiving threats that his house would be burned following his testimony against President Kenyatta in The Hague.¹³

4. Human Rights Defenders facing particular risks

- Since same-sex conduct is criminalised by law in Kenya and HRDs who work to protect LGBTI rights face dangers and restrictions.¹⁴ In recent years, mobs have attacked LGBTI organisations and assemblies and

attempted to kill HRDs.¹⁵ LGBTI organisations face restrictions on registration, which has forced many to use other names and/or to register as community based organisations.¹⁶

- Land expropriation by the Kenyan government, private investors and multinational corporations for agribusiness is widespread. HRDs fighting for land rights and other ESC rights face disappearance, intimidation and death threats. In May 2013, for example, the rice paddies and maize farms of Lydia Mukami and of other leaders of the Mwea Foundation, an NGO working on land rights, were torched. Leaders of the organisation have received death threats.¹⁷

5. The response of the State regarding the protection of human rights defenders

- In 2013, President Kenyatta signed the KICA Bill into law.¹⁸
- The Government did not take adequate steps to prevent mobs from attacking LGBTI persons and human rights defenders in 2010 and, in many cases, detained victims rather than perpetrators.¹⁹ There is an ongoing lack of investigation or accountability in this regard.
- During its last UPR session, Kenya rejected all five recommendations made on sexual orientation and gender identity,²⁰ and, more recently, some parliamentarians have publicly called for a Bill further restricting the rights of sexual minorities.²¹

6. Recommendations to the Government of Kenya

- Develop and enact specific laws and policies in line with UN Declaration on Human Rights Defenders and HRC Resolutions 22/6 and 24/21 to ensure a safe and enabling environment for civil society actors and HRDs.
- Ensure that all alleged attacks against HRDs are promptly and thoroughly investigated, that perpetrators are held accountable, and that victims have access to effective remedies.
- Repeal restrictions on NGO access to foreign funding in conformity with the rights to freedom of expression and association.
- Amend or repeal the Information Communication Amendment Bill 2013 and the Media Council Bill 2013 to comply with the regional and international human rights instruments ratified by Kenya.
- Enact specific laws and policies which give effect to the right of safe and unhindered access to international human rights and criminal justice mechanisms and condemn and punish acts of intimidation and reprisals against HRDs who engage with the UN and regional systems.
- Ensure strong public statements recognising the legitimate and important role of human rights defenders, including journalists, those who work on issues of corporate accountability, those working to combat impunity and ensure criminal accountability, and those working on women's rights or gender issues.
- Accept the request for a country visit of the SR on HRDs, which is pending since 2003.

With the upcoming UPR of Kenya in January 2015, the government of Kenya has the opportunity to review its restrictive laws and policies and create a safer environment for the work of HRDs and journalists. Preventing intimidation and attacks against human rights defenders, fully investigating and ensuring accountability where such attacks occur, and combating impunity are all essential for Kenya's democracy and development.

¹ <http://www.achpr.org/sessions/54th/intersession-activity-reports/human-rights-defenders/>

² <http://www.defenddefenders.org/2013/10/oral-intervention-on-the-report-of-special-rapporteur-on-human-rights-defenders-in-africa-2/>

³ <http://www.defenddefenders.org/2014/02/kenya-release-human-rights-defender-muchangi-nyaga/>

⁴ <http://www.hrw.org/news/2013/10/04/kenya-rights-defenders-under-attack>

⁵ http://www.freedomhouse.org/report/freedom-press/2013/kenya#.U5AvQ_mSxKY

⁶ <http://freeassembly.net/rapporteurpressnews/africa-civil-society-under-attack/>

⁷ <http://www.achpr.org/press/2014/04/d198/>

⁸ <http://www.achpr.org/press/2014/04/d198/>

⁹ <http://en.rsf.org/kenya-draconian-bill-06-11-2013.45428.html>

¹⁰ <http://www.article19.org/resources.php/resource/37330/en/kenya:-president-must-reject-the-information-and-communications-bill>

¹¹ <http://www.fidh.org/IMG/pdf/kenya631a2014bassdef.pdf>

¹² <http://www.ohchr.org/Documents/Issues/FAssociation/StatementCivilSocietyRoundtable23092013.pdf>

¹³ <http://www.hrw.org/news/2013/10/04/kenya-rights-defenders-under-attack>

¹⁴ http://www.amnesty.org/sites/impact.amnesty.org/files/Wire13_JulAug_web_links.pdf

¹⁵ <http://www.hrw.org/news/2010/02/17/kenya-halt-anti-gay-campaign>

¹⁶ <http://www.uhai-eashri.org/ENG/resources> (Annual Report 2012)

¹⁷ <http://www.frontlinedefenders.org/node/22870>

¹⁸ <http://www.humanipo.com/news/38272/kenyatta-signs-into-law-controversial-media-bill/>

¹⁹ <http://www.hrw.org/news/2010/02/17/kenya-halt-anti-gay-campaign>

²⁰ <http://www.upr-info.org/database/>

²¹ <http://www.fidh.org/IMG/pdf/kenya631a2014bassdef.pdf>