

Submission to the Universal Periodic Review of Kenya July, 2019

Introduction

Kenyan security forces were responsible for various abuses, including excessive use of force especially during elections, and enforced disappearances and extrajudicial killings of people with alleged links to Somali based Islamist militant group Al-Shabab or of alleged criminal suspects.

Although Kenya created several accountability institutions following the adoption of a new constitution in 2010, these institutions have not been effective. The authorities have either enacted legislation to erode the independence of these accountability institutions or starved them of the necessary financial and political support.

NGOs working on a range of issues, particularly accountability, security force abuses, and elections, continue to face hostile rhetoric and restrictions, including threats of closure by authorities. Journalists and bloggers also faced harassment.

Abuses by security forces

Terror related killings and enforced disappearances

Kenyan police and military continue to be implicated in the disappearances and killings of individuals suspected of links to Al-Shabab. In 2016 Human Rights Watch [documented 34 cases of enforced disappearances and 11 extrajudicial killings](#) in Nairobi and Northeastern Kenya. The cases are illustrative of a wider pattern of abuses, which authorities have failed to end or investigate.

Kenya's regulatory and judicial institutions have systematically failed to provide information or ensure justice and reparations to victims of extrajudicial killings and enforced disappearances in Nairobi, the northeast and at the coast. The government has instead denied responsibility for these abuses, and has refused to take effective legislative, judicial and administrative measures to end the abuses. The relevant government agencies have failed to conduct investigations, withheld the names of perpetrators, and failed to provide reparations or guarantees of non-recurrence to survivors.

Recommendations

- Urge Kenyan authorities to ensure that security forces end enforced disappearances, extrajudicial killings and arbitrary arrests of suspects. The authorities should ensure that relevant officers and prosecutors take all necessary steps to investigate allegations of abuse and hold those criminally responsible to account;
- Ensure that anyone detained in Kenya, including those suspected of links to Al-Shabab, are detained in compliance with Kenyan law, including being held in officially gazetted places of detention, are brought promptly before a judge, and are provided prompt access to legal counsel and family members;

- request Kenya to respond to the request by the various UN mandate holders seeking to visit with the view to either gather more facts or thoroughly investigate cases of extrajudicial killings and enforced disappearances.

Killing related to the 2017 presidential elections

Kenya's 2017 presidential election was [marred by protests](#) in the capital Nairobi and other opposition strong holds. Kenyan and international human rights groups, including Human Rights Watch and the governmental Kenya National Commission on Human Rights, found that [police and pro-government militia were responsible](#) for the deaths of many opposition supporters in Nairobi and western Kenya during the protests in both rounds of elections.

The first presidential election was held on August 8, but the [results were annulled](#) by Kenya's Supreme Court and a second election was held on October 26. President Uhuru Kenyatta was sworn in for a second term in November.

Human Rights Watch research found that police and armed gangs [killed more than 100 people](#) during the prolonged elections period. Human Rights Watch and Amnesty International found in a joint report in October that [at least 67 people were killed](#) countrywide during the first round of voting in August, most of them either shot or beaten to death by police.

During the re-vote, Human Rights Watch documented 37 more killings, most by police, in Nairobi's Embakasi, Kawangware, Dandora, Mathare, Kibera, Kangemi, Kariobangi, and Riverside neighborhoods. Armed pro government gangs killed some people they identified by their ethnicity as likely opposition supporters. Like many incidents of killings, the cases documented by Human Rights Watch and other rights groups are not exhaustive, with many families afraid of coming forward to speak about their relatives.

Although most of the cases have been brought to the attention of all the relevant state agencies such as the Independent Policing Oversight Authority (IPOA), a civilian police accountability institution, no one has been held to account. The authorities have held public inquests in the killings of just six months old baby Samantha Pendo and nine-year-old baby Stephanie Moraa, but the inquests failed to identify police officers responsible for the killing, mainly due to lack of cooperation from police.

Recommendations

- Urge Kenyan authorities to urgently and thoroughly investigate the unlawful police use of force during the 2017 election period and ensure that all those found to have violated the law are held to account, including by referring cases for prosecution in proceedings which comply with international law and standards on fair trial, without recourse to the death penalty;
- Urge Kenya to review police standing orders or operating procedures on riot control to align them with both Kenya's constitution and international standards on police use of force. The authorities should further ensure that all future police deployments and operations are lawful;
- Urge Kenya to remove, discipline and prosecute all officers found to have violated human rights, including violating provisions of international standards and the national laws.

Killings in Nairobi of alleged criminals

Kenya is today witnessing an alarming rate of extrajudicial killings, mostly of young people from informal settlements police allegedly suspect to be involved in crime. The killings, contrary to the law, are rarely reported or investigated.

In 2018 alone, Kenyan human rights groups [documented at least 267 cases](#) of extrajudicial killings by police. In 2017, the Independent Medico Legal Unit (IMLU), a Nairobi based NGO that works on police accountability, documented 152 extrajudicial killings by police. IMLU further noted that, between another 612 people were killed between 2013 and 2016.

Human Rights Watch found that, in three separate incidents in 2018 and 2019, police shot dead [at least 21 people](#), apparently unlawfully, alleged to be criminals in Nairobi's Dandora and Mathare neighborhoods alone. Kenyan activists said police have unlawfully killed many more in the past year. Under Kenyan and international law, the police should only intentionally use lethal force when it is strictly unavoidable to protect life.

In each of the 21 killings that Human Rights Watch documented police failed to prepare preliminary reports on the killings as required under Kenyan law. Police also failed to conduct an inquest in most of the killings as required by law. In some instances, witnesses to the killings have faced threats and refused to testify.

Recommendations

- Urge Kenyan authorities to end arbitrary use of force in informal settlements and to take all necessary measures to ensure justice in each of these killings;
- Urge Kenya to clarify whether there is a shoot to kill policy by police in Nairobi's informal settlements and, if there is such a policy, to quickly discontinue it, as it is in violation of the law;
- Urge Kenya to ensure police officers follow the law and cooperate with those investigating any killings linked with police;
- Urge Kenya to take measures to ensure witnesses to killings by police are not harassed, threatened or eliminated.

Threats to Civil Society

NGOs working on a range of issues, particularly accountability, security force abuses, and elections, continue to face hostile rhetoric and restrictions, including threats of closure by authorities. In April 2015, Kenyan authorities included two coast-based human rights organizations, Haki Africa and Muslims for Human Rights (MUHURI), on an official [list of alleged supporters of terrorism](#). The list comprised of 86 individuals and entities, including the two human rights groups, which have regularly documented security abuses in the context of counter terrorism.

Kenyan courts [overturned the decision](#) on grounds that it lacked evidence, but the incident points at a wider pattern of harassment and intimidation of human rights organizations in Kenya. In October 2015, the NGO regulatory body announced plans to [deregister more than 900 NGOs](#) over, among other reasons, alleged failure to comply with regulatory requirements and links to terrorism. The cabinet secretary later suspended the plan.

In December 2016, Kenyan authorities [suspended a civic education program](#), "Kenya Electoral Assistance program, KEAP 2017," that was funded by USAID and being implemented by International Foundation for Electoral Systems (IFES). The NGO regulatory body, the NGO Board, accused IFES of lacking proper registration documents. IFES denied the accusation, but halted the implementation of the program.

On August 14, 2017, the NGO Board announced the cancellation of the registration of Kenya Human Rights Commission (KHRC) — one of the oldest human rights groups in Kenya — citing [alleged tax evasion](#) and other reasons. The cabinet secretary for

interior later suspended the move, but tax authorities continued for months to harass KHRC officials.

On August 16, 2017, police and Kenya Revenue Authority (KRA) officials [visited the offices of another NGO](#), AfriCOG, which focuses on governance issues and had challenged the 2013 elections in which Kenyatta was declared winner, but were successfully resisted by AfriCOG's lawyers. In November, the [NGO Board summoned](#) Inuka Kenya, Katiba Institute and Muslims for Human Rights (MUHURI) over, among other allegations, lacking proper registration documents. The officials of these organizations said they believed the threats [to deregister them were aimed](#) at stopping them from challenging the October election results in court.

Recommendations

- Urge Kenyan authorities to respect and protect the work of activists across Kenya and further urge the Kenya government to ensure that all those implicated in the harassment and intimidation of activists are held to account;
- Urge the Kenyan government to stop arresting, harassing or threatening activists and nongovernmental organizations on false accusations, including links to Al-Shabab;
- Kenya should ensure prompt, thorough, independent and effective investigation of the threats and other forms of intimidation or harassment, and adopt a plan that would address the failure to adequately investigate such cases;
- Kenya government officials should, in line with international best practices such as the UN declaration on human rights defenders, respect and protect the work of nongovernment organizations

Threats to Freedom of Expression and Media

Despite numerous public promises by President Kenyatta to safeguard press freedom, police and senior state [officials attacked and threatened journalists](#) writing on "sensitive issues" such as elections, land, corruption and security.

In the lead up to the 2017 elections, journalists and bloggers [reporting on sensitive issues](#) such as land, corruption, and security faced threats, intimidation, arbitrary arrests, and physical assaults. Around the 2017 elections, police and other government officials threatened and intimidated journalists and bloggers. In early 2018, the Communications Authority of Kenya [switched off at least three television stations](#) – KTN, NTV, Citizen and Inooro – for defying government order against covering Odinga's mock swearing in ceremony on January 30. On January 6, David Mugonyi, the spokesperson of Deputy President William Ruto, [threatened to have a Daily Nation journalist](#), Justus Wanga, sacked for a story that exposed a rift between Kenyatta and Ruto over cabinet appointments.

At least two Kenyan journalists were [arrested before and after](#) the August 2017 elections. On June 18, 2017, police officers arrested *Daily Nation* journalist Walter Menya and released him without charge after two days. Police alleged Menya had solicited for a bribe, but the Nation Media Group argued that he was being targeted for reporting how government officials flouted election campaign laws with impunity.

On August 12, 2017, [police arrested two television](#) journalists, Duncan Khaemba, and Otieno Willis, whom they wrongly suspected of wearing bullet-proof vests without relevant approval documents. The arrests appear to have been designed to obstruct their work in covering police abuses.

In May 2017, Human Rights Watch documented [at least 50 cases of journalists and bloggers](#) who faced a range of abuses in the previous three years across Kenya, including beatings and threats. In some cases, Kenyan authorities have withdrawn advertisements or withheld payment to media houses in a bid to pressure individual

media outlets to stop criticism of the government. Despite receiving formal complaints from journalists and bloggers, police have rarely investigated the attacks or threats and the perpetrators have rarely been held to account.

Recommendations

- Kenyan government should commit to ensuring that police and other government officials stop harassing, threatening or physically attacking journalists and bloggers;
- Urge Kenya to ensure that officials, regardless of rank or position, who threaten, harass, or arbitrarily arrest journalists or bloggers are investigated and prosecuted;
- Urge Kenya to publicly respond to the 2015 request from the UN Special Rapporteur on Freedom of Opinion and Expression to visit Kenya.