

**STATEMENT**  
**UPR Pre-session on KENYA**  
**Geneva, 18<sup>th</sup> – 21<sup>st</sup> February 2025**  
**Delivered by: National Coalition of Human Rights Defenders- Kenya**  
**(Defenders Coalition)**

**1. Presentation of the Organisation**

This statement is delivered on behalf of the National Coalition of Human Rights Defenders-Kenya (Defenders Coalition) a national, not-for-profit, membership organization established in 2007 and registered under Kenyan law as a Trust to champion for the safety, security and wellbeing of human rights defenders (HRDs). The Defenders Coalition works primarily for the protection of HRDs in Kenya.

**2. National consultations for the drafting of the national report**

At the drafting of the national report, there was no consultation with civil society organisations (CSOs) in the country. CSOs at the drafting of the alternative national CSOs report invited the national commission of human rights to participate in consultations for the development of the said reports.

**3. Plan of the Statement**

This statement addresses the following issues: (1) freedom of association, (2) human rights defenders, (3) freedom of peaceful assembly and (4) freedom of expression.

**4. Statement**

**i. Freedom of Association**

**A. Follow up to the third review**

During Kenya's third Cycle, the government received four recommendations on freedom of association. The government accepted all four recommendations. In particular, the government was asked to ensure that the freedom of association is guaranteed and to review the Associations Bill of 2018.

**B. New developments since the third review**

The Associations Bill of 2018 was not passed into law.

The Community Groups Registration Act No 30 was enacted in 2022. This law aims to regulate community-based organizations, including social justice centres. However, power is concentrated within a single authority that may undermine the objectives and values of community groups.

In 2023, the Supreme Court of Kenya delivered a judgement in the case of *NGOs Co-ordination Board v EG & 4 others Petition 16 of 2019 that* held that queer and gender minorities in Kenya are guaranteed the freedom of association. Despite this progressive

decision, the National Gay and Lesbian Human Rights Commission is yet to be registered as an association.

The government has proposed the discriminatory Family Protection Bill of 2023 which discriminates against queer and gender minorities.

The Public Benefits Organisations Act of 2013, was operationalized in May 2024. However, it has not been fully implemented due to the absence of regulations. The absence of the regulations has already subjected CSOs to increased unnecessary scrutiny, leading to multiple administrative measures being imposed against some organizations.

### **C. Recommendations**

We therefore urge that the issue of freedom of association become prominent in the upcoming UPR. We therefore recommend that the government of Kenya to;

- a) Jointly with CSOs, develop regulations for the full operationalization of the Public Benefits Organizations Act of 2013.
- b) Parliament not to enact the Family Protection Bill of 2023.
- c) Implement the Community Groups Registration Act of 2022 in a progressive holistic manner in line with the Constitution; and
- d) The National Gay and Lesbian Human Rights Commission be registered formally as an association in Kenya.

#### **ii. Human Rights Defenders (HRDs)**

##### **A. Follow up to the third review**

The Kenyan government received eight recommendations on human rights defenders (HRDs) and accepted all. It was recommended that Kenya adopts a law that protects HRDs ensuring clear investigations of cases of violations against them, creating and enabling environment to thrive in their work. While it is acknowledged that HRDs, especially at the grassroots, play a significant role in the protection, championing and promotion of rights and freedoms as guaranteed in the Kenyan Constitution and international instruments, the absence of a law that protects and safeguards them is lacking. Further, investigations into complains by HRDs remains a key hindrance towards realizing justice for aggrieved HRDs.

##### **B. New developments since the third review**

Human rights defenders continue to face numerous forms of violations to include attacks, harassment, intimidation, abductions, disappearances, arbitrary arrests, criminalization and murder with over 3000 cases documented within the last 4 years. Justice was met for some HRDs who were killed, where their killers were successfully prosecuted and sentenced. In other cases, HRDs are arrested arbitrarily numerous times and sometimes they are not arraigned in court and no charges are preferred against them.

Despite the National Coroners Service Act being enacted in 2017, the same is yet to be operationalised. The Human Rights Defenders Policy and Plan that would otherwise protect HRDs is not in place hence HRDs remain at risk.

##### **C. Recommendations**

To fully address the situation of HRDs, we recommend that the Kenyan government to;

- a) Adopt and implement a human rights-based HRDs Policy and Plan;
- b) Investigate and prosecute perpetrators of attacks and disappearance of HRDs.
- c) Fully operationalize the National Coroners Services Act of 2017; and
- d) Create an enabling and safe environment for human rights defenders to work in.

### **iii. Right to peaceful assembly**

#### **A. Follow up to the third review**

During the 3<sup>rd</sup> Cycle, Greece made a recommendation to the Kenyan government to take further measures towards guaranteeing the freedom of peaceful assembly. Poland recommended ensuring the unimpeded functioning of democratic processes in the country including transparent regulations on exercising the right to peaceful assembly. Despite Constitutional guarantees, state security agencies continue to violate these rights by the use of excessive force when policing peaceful assemblies. Over 800 cases of peaceful protesters sustaining injuries and others over 110 protestors losing lives in the last four years have been documented. Administrative actions of prior notification of security agencies for state security to be provided during protests continue to hinder the realization of this right. The increased misuse and abuse of procedures by the police is concerning. The failure to arrest and prosecute police officers who violate the rights and freedoms of peaceful protesters is concerning and needs to be addressed comprehensively.

#### **B. New developments since the third review**

In 2024, there was a proposed retrogressive Assemblies and Demonstrations Bill which proposed serious criminal penalties for participants and organizers of assemblies and protests. This proposed law was rejected by Parliament and was not passed. Following the peaceful protests in June to August 2024, numerous rights of protesters were violated to include right to life, freedom from torture, cruel and degrading treatment, peaceful assembly and equality before the law. The Kenya National Commission on Human Rights reported that at least 61 persons were killed during the protests as police used excessive force. Disappearances and arbitrary arrests, including those of critical voices, doctors and lawyers, were observed, with some victims abducted from their homes. Accountability measures for the perpetrators of these violations are lacking. These actions reveal a troubling pattern of repression that contradicts the government's commitments to fulfil the constitutional right to peaceful assembly

#### **C. Recommendations**

We, therefore, urge the government of Kenya to;

- i. Parliament to consider not passing the Assembly and Demonstrations Bill, 2024;
- ii. Conduct an independent and thorough investigation into the use of excessive force against protestors and ensure accountability for those responsible; and
- iii. 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.

#### iv. **Freedom of expression**

##### **A. Follow up to the third review**

Kenya received and accepted four recommendations to guarantee the freedom of expression. Despite the Kenyan government accepting recommendations regarding this freedom, there has been a continuous and deliberate violation of this right and especially in online spaces. Increased surveillance, smear campaigns, arbitrary arrests and forceful disappearances of critical voices persist with over 86 disappearances within the past 12 months.

##### **B. New developments since the third review**

There is increased surveillance, smear campaigns, arbitrary arrests and forceful disappearances of critical voices persist with over 86 disappearances<sup>1</sup> in the last 12 months alone. In 2020 and 2021, one prominent online activist was arrested and arraigned in court for his posts on social media and issued with a very high and punitive cash bail of USD 5000.

##### **C. Recommendations**

We, therefore, urge that the issue of the right to peaceful assembly become prominent in the upcoming UPR. We therefore recommend that the government of Kenya to;

- i. 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;
- ii. Amend the Computer Misuse and Cyber Crimes Act, 2018 to be in line with international standards to guarantee freedom of expression, and ensure new legislation conforms to international human rights norms.

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<sup>1</sup> <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1213/Statement-on-the-Recent-Surge-of-AbductionsEnforced-Disappearances-in-Kenya>