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Just Atonement Inc.

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Just Atonement Inc. (JAI) is global community of lawyers who have joined forces to address imminent threats to democracy, human rights and a livable planet.

JAI was established in 2017 in the United States of America.

JAI invites and organizes legal professionals globally into a single order and aligns a vision of a peaceful, sustainable world, governed by the democratic rule of law; litigates in courts all over the world on cutting edge human rights cases to build peace and sustainability, and to defend democracy; and advocates for a vision of a true Golden Age for humanity: a world where countries settle their disputes peacefully, manage social and economic systems that are in harmony with the planet, and govern themselves through the principles of democracy, the rule of law, and human rights.

JAI submits this written submission with respect to the Universal Periodic Review of the Republic of Kenya (Kenya).

Analysis

Assessing the human rights situation in Kenya invites varying opinions. Since its independence in 1964, the country has developed a democratic republic boasting a dynamic private sector with a highly skilled workforce, a youthful population and improved infrastructure.

The 2010 Constitution was central in moulding the nation's capacity to place human rights at the core of future development and progress. The Preamble recognises "the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law". A number of laws have since been passed to implement the rights such as the Health Act, the Water Act, the Basic Education Act and the Persons Deprived of Liberty Act and the Right to Information Act. In 2018, Amnesty International Kenya reported a survey showing that 70% of Kenyans believe that the human rights landscape in the country has improved since the establishment of the Constitution.



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This UPR highlights the main human rights concerns in Kenya in 2019. The 2010 Constitution was voted in by citizens and served as a beacon of hope for human rights, including social, economic and cultural rights. Checks and balances were entrenched into this new Constitution making it the most comprehensive and democratic development in Kenya since its independence. Nevertheless, the Constitution failed to outlaw the death penalty, imposed restrictions on reproductive rights and failed to provide provisions to protect issues pertaining to gender identity and sexual orientation. The specific issues addressed in this UPR are the diluted political freedoms, lack of freedom of expression and the press, worrying refugee rights and gay rights. These all remain cause for concern for the country's fragile human rights record. Many of these issues are underpinned by widespread corruption and a blatant abuse of power exercised by the authorities, in particular the security forces.

Homosexuality remains a crime which is punishable with up to 14 years in prison. Although prosecutions are being pursued less by authorities, the law still exists and the government continues to deny that this is an important issue of the agenda of Kenyan people. President Kenyatta has declined to comment on the government's explicit position on gay rights on numerous occasions citing that the law is what it is. He has also made comments such as: "the issue of gay rights is really a non-issue...But there are some things that we must admit we don't share. Our culture, our societies don't accept." This seems to echo the overarching consensus amongst Kenyans highlighted in surveys that homosexuality should continue to be condemned and that its criminalisation is acceptable.

In the courts today, there have been many constitutional challenges regarding the country's anti-homosexuality laws. In 2018, the Kenyan Court of Appeal declared the use of forced anal examinations on people suspected of being homosexual a violation of laws on cruel and degrading treatment. But, as recent as May 2019, the High Court chose to uphold the law which criminalises gay sex. Activists will appeal this decision with the hope that it inspires a change across Africa in how homosexuality is regarded. Human Rights Watch confirmed that 33 countries across the African continent continue to outlaw gay sex.

The political climate remains unstable due to allegations of widespread corruption. Kenya is a presidential representative democratic republic which holds regular elections. Elections are often tainted by allegations of fraud as well as being marred by unlawful use of force against protestors and opposition supporters, in particular residents in opposition strongholds across the country. Following the 2017 election where President Kenyatta gained victory, the Supreme Court nullified the election in the following month after the primary opposition candidate successfully challenged the election results and called for a fresh election. The opposition alleged that the results had been tampered by hackers claiming the worst 'voter theft' in history. Despite the ruling for re-election, the opposition withdrew from the race.



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With regards to the post-election violence which ensued in 2007-2008, impunity for the unlawful actions by authorities as well as the president and his closest aides is an ongoing concern. Particularly in light of the case against the President being dropped at the International Criminal Court, many victims did not benefit from the promised reparations. The post-election violence resulted in over 1,000 deaths with over hundreds of thousands being displaced.

To this day there has been no concrete plan developed by the government to implement a reparations fund which was established in 2015 as a way of supporting the victims of the 2007-2008 post-election violence. Human Rights Watch recently reported that the government had in fact taken some steps to help those internally displaced persons who suffered as a result of this violent period, but did not do anything to assist rape survivors who are still in need of medical treatment and financial help.

Furthermore, there have been many reported instances of the government using the courts as a way of preventing the opposition from having the necessary political freedoms by making frivolous accusations. Opposition party members are known to have been charged with non-bailable offences, often where the evidence lacks any credibility, simply to keep their criticisms at bay, especially close to election time.

Freedom of the press and media has been watered down over the years. Although freedom of the press is constitutionally guaranteed, over the past few years the government has empowered authorities to use legal, administrative and informal measures to restrict the media in what they can publish. In 2013, policymakers made amendments to previous laws which saw the media coverage about terrorist attacks being limited. Critics say that the law was an attempt to suppress the reporting of Kenya's deteriorating security and safety conditions.

This also includes subjecting journalists and bloggers who are known to report on sensitive issues to threats, physical assaults and arbitrary arrests to ultimately obstruct their work. Election time has been noted as being particularly risky for the press which numerous high-profile journalists and bloggers being arrested prior to elections.

Overall, the laws governing the media have been considered draconian with the press being considered to be only partly free as a result of the government's heavy hand in controlling their access and output.

Freedom for civil society organisations is being threatened. Over the past few years, a general trend of hostility towards civil society organisation working on sensitive issue areas such as government accountability, abuse by the security forces, and elections has been reported. With many restrictions being imposed on their activities - particularly noted around the elections period - several organisations have been confronted with the threat of being closed down by



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authorities on ‘technicalities’ such as lacking proper registration documents, despite being in operation for many years.

Victim organisations included civic education programmes funded by international donors such as the ‘Kenya Electoral Assistance program, KEAP 2017’ worth USD\$20million which was being implemented by the International Foundation for Electoral Systems. This was shut down with the national NGO board citing an absence of proper registration. Furthermore, the Kenya Human Rights Commission which is one of the oldest human rights group in the country was under threat of being shut down due to allegations of tax evasion but this move was soon suspended by government officials. It is noteworthy that the majority of organisations and initiatives being targeted by the authorities included those challenging the electoral system’s legitimacy.

Security forces abuses are rife. During the period running up to elections and following them, reports about the manipulation of technology and tally counting are published often leading to conclusions that the security forces were instrumental in facilitating these activities. Moreover, complaints about the use of excessive force towards protests and opposition party supported are common. These include allegations of security forces beating, raping and sexual harassing people involved in the protests. Human Rights Watch confirmed sexual and gender-based violence against men, women and children by the police and security forces during the 2007 elections in particular.

In 2017, human rights organisations noticed a worrying trend in rural parts of Kenya which affected local farmers. They discovered that the police and military were heavily implicated in the beating and killing of herders and their livestock if they intruded on the land of private ranch owners. The Pokot community were the main victims of such violence, despite potentially having a rightful claim to the land.

The threat of Al-Shabab, Somalia based Islamist armed group with allegiances to ISIS, is prevalent across the country, according to Kenyan national security experts. The security forces have been implicated in enforced disappearances of those with suspected linked to the terrorist organisation, as well as conducting extrajudicial killings. The targets of these operations have almost always been Kenyan and non-Kenyan Somalis and Muslims. Despite the outwardly discriminatory and unlawful nature of these activities, there has been no commission of an inquiry as demanded by human rights organisation in Kenya and around the globe.

The unlawful overreach of authority by the police has resulted in extrajudicial killings being carried out more often than not. In 2017, a report by Mathare Social Justice Centre found that at least 57 young men and women had been extrajudicially killed in the years 2016-2017 alone.



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With regards to the death penalty itself, despite not outlawing it completely, in 2017 the Supreme Court of Kenya declared that the mandatory death sentencing procedure was unconstitutional. This procedure imposed a death penalty on those convicted of murder or armed robbery.

The rights of refugees seem to be diminishing at an alarming rate. Kenya is one of the most developed African economies with relative stability compared to its neighbours. This undoubtedly attracts a lot of refugees from neighbouring countries. Over the years, Kenya has been a place of shelter and refuge for many Somalians fleeing from ongoing war and persecution in their country.

Numerous attempts have been made by the government to shut down refugee camps housing predominantly Somalian refugees resulting in the number of refugees in camps falling by half. Cuts to the UNHCR budget have also significantly hindered the smooth operation of these camps as well as the department of refugee affairs being disbanded within government. The official government line is that Somali refugees in the camps tend to harbour terrorists and therefore need to be forcefully returned to Somalia. Moreover, human rights workers and activists from countries such as Somalia and South Sudan who have sought refuge in Kenya for fear of persecution in their own countries have been forcibly returned which is considered to be a flagrant violation of international law.

On a positive note, in February 2017, the Kenyan High Court stopped the government order to shut down the Dadaab refugee camp - the world's largest refugee camp housing 240,000 refugees of mainly Somalian descent. The courts seem to be doing well to challenge the government on policies pertaining to the immigration and refugees.

Gender-based violence is still an issue. According to the 'Gender-based violence in Kenya report published by the National Gender and Equality Commission in 2016, 39% of women and girls aged 15 years and above have encountered physical violence, with more than one-fifth of the women have been victims of sexual abuse. Addressing domestic abuse continues to be an issue at the forefront of the women's rights agenda.

Acts like the Prohibition of Female Genital Mutilation (2011), Employment Act (2007), the Protection Against Domestic Violence (2015) and the National Policy on the Prevention and Response to Gender-based Violence (2014), have been introduced to provide greater provisions for girls and women in Kenya, but there seems to be a long way to go to change the culture which allows discriminatory attitudes to exist.

The interaction between business and human rights is a concern for the government. In Kenya, there is a large informal economy. The informal sector accounts for over 83% of the total employment throughout the country in 2018. Many of these workers lack any employment rights which could protect them in the case of a conflict with their employer. Human rights experts and



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business leaders believe that a more comprehensive infrastructure needs to be developed to better integrate the informal economy into formal employment.

Environmental damage poses a significant risk for conflict. As a result of the development of dams and plantations in Ethiopia's lower Omo Valley, Lake Turkana in Kenya has seen its water levels drop drastically which is threatening the livelihoods of over 500,000 indigenous people in both countries. This poses a significant risk of creating an internally displaced persons population which could result in conflict over land and food. The government needs to better plan for these inevitable situations to avoid future human rights catastrophes.

Respectfully submitted,

/s/ Inder Comar and Aqsa Hussain

of Just Atonement Inc.

