

**Universal Periodic Review Submission
Kenya
June 2014**

The human rights situation in Kenya has deteriorated over the past five years and the government has failed to make substantial progress on key reforms. The lack of accountability for serious violations by police and other security forces remains a profound concern. Credible allegations of extrajudicial killings, torture, mass arbitrary detentions and extortion by police have not been investigated or prosecuted.

Respect for freedom of expression and association are of growing concern: the current administration has failed to investigate or address increased attacks and threats against human rights defenders and independent media, while encouraging legislative restrictions on non-governmental organizations.

Extrajudicial Killings, “Disappearances” and Other Abuses by Police

During the UPR review in 2010 Kenya indicated that while it was committed to preventing extrajudicial killings and ensuring compensation and justice for the families of victims through due process, it “did not agree with linking that issue to the Special Rapporteur’s report,” which it said had shortcomings. Yet over the past five years police have been responsible for hundreds of extrajudicial killings. In 2013, a survey by the Kenya National Commission on Human Rights (KNCHR) found that police unlawfully killed 120 people between May and August 2013 under circumstances that could have been avoided. The perpetrators have not been investigated or prosecuted, however, due to weak internal accountability structures and an apparent lack of political will.

The KNCHR and the UN special rapporteur on extrajudicial, summary or arbitrary executions have documented police involvement in the killing of up to 500 members of the Mungiki, a proscribed criminal gang that has been accused by the government of extortion and executions. However, police have not submitted reports to the Independent Police Oversight Authority to facilitate investigation in any of these cases or even taken other steps to internally investigate and hold accountable those responsible for these killings. The Police Act provides that any killing by police must be reported to the oversight authority, a civilian body created in 2012 for investigation of incidents of police abuse.

Police have also been implicated in the torture, disappearance and unlawful killing of alleged terrorism suspects and individuals of Somali origin or Muslims, especially recent converts to Islam, in Mombasa, Nairobi, North Eastern and other parts of Kenya.

Police have also failed to investigate the killings of three prominent Muslim clerics in Mombasa that police had earlier accused of having links to terrorism groups. In August 2012, Sheikh About Rogo was shot dead by unknown gunmen in Mombasa. Police have denied allegations that police were behind the killing of Sheikh About Rogo. In October 2013, Sheikh Ibrahim Ismail Omar, who had succeeded About as the chief cleric at the Masjid Musa Mosque in Mombasa,

was shot dead by unknown gunmen. In April 2014, Sheikh Abubakar Sharif Ahmed, also known as "Makaburi," who also preached at Masjid Musa Mosque in Mombasa, was shot dead by unknown gunmen. Makaburi had told Human Rights Watch and journalists that police had told him to his face that they would kill him.

Freedom of Expression and Association

During its previous UPR review, Kenya agreed to "take effective measures to safeguard the work of human rights defenders, including by ensuring that witness protection and the protection of human rights defenders who assist witnesses are a priority for the Government". It agreed to cooperate fully with the International Criminal Court (ICC), including by ensuring the "protection of witnesses from intimidation and violence."

Yet over the past three years, harassment of individuals and non-governmental organizations perceived to support the ICC cases against President Uhuru Kenyatta, deputy President William Ruto, and radio journalist Joshua arap Sang, has increased. The three face charges of crimes against humanity for their alleged roles in Kenya's 2007-2008 post-election violence.

Kenya's leaders have failed to prevent – and at times encouraged – hostility towards independent activists more broadly. While campaigning on a joint ticket for the March 4, 2013, presidential elections, for example, Kenyatta and Ruto accused political opponents and civil society of using the ICC cases to try to exclude them from the race. The two leaders and allied bloggers began to attack leading activists in public meetings and online soon after the ICC issued its summons for the two men to appear in The Hague in December 2010.

Kenyatta and Ruto also have accused NGOs of interfering in government affairs and have sought to restrict nongovernmental groups in Kenya from receiving funding from foreign organizations. Soon after returning from a status conference at The Hague ahead of the hearing to confirm charges against him in 2011, Ruto said: "NGOs should stop interfering with government matters, writing letters to their donors abroad to support the ICC intervention and compiling reports about post-election violence. It is none of their business."

The Jubilee administration has also tried to stifle civil society by capping funding to non-governmental organizations from foreign sources at 15 percent and allowing the President and the line minister greater control. An amendment to the Public Benefits Organizations Act (PBO Act) was rejected by parliament in late 2013 but may be re-introduced in parliament in 2014.

Violations of Refugee Rights

Kenyan police operations in the wake of grenade and gun attacks in different parts of Kenya have routinely resulted in serious human rights violations against both refugees and Kenyan citizens, including physical abuse amounting to torture, arbitrary arrest and detention in inhuman conditions, and extortion.

In spite of having accepted a recommendation to "continue the current policy vis-à-vis Somali refugees, based on solidarity and the protection of fundamental human rights", the Kenyan government increased its hostile rhetoric against Somali refugees in 2013 when the Uhuru Kenyatta administration came to power, accusing them of responsibility for the many un-investigated gun and grenade attacks, calling for the refugee camps to be closed, and for

Somalis to return to Somalia despite the ongoing conflict and insecurity in that country. Kenya stopped registering urban refugees in December 2012, and a government relocation plan the same month that would have forced all urban refugees to relocate to overcrowded camps was quashed by a Kenya High Court ruling in July 2013.

Following a series of grenade and gun attacks in Nairobi's Eastleigh neighborhood in November 2012, police responded with widespread abuses, including torture, rape and other violence against at least 1, 000 people, mainly Somali refugees, as well significant extortion and looting during subsequent police operations in Eastleigh.

On April 1, 2014, police again responded to a spate of grenade and gun attacks with mass round-ups of ethnic Somalis of both Kenyan and Somali nationality in Nairobi's Eastleigh and South C neighborhoods. Between April 9 and May 20, the government also summarily deportated 359 people to Somalia, without permitting the UN refugee agency to access the individuals in detention to identify registered refugees and asylum seekers among them to anyone wishing to claim asylum.

According to Human Rights Watch research the Administration Police (AP) and the paramilitary General Service Unit (GSU) have been responsible for many of the worst abuses and serious human rights violations during security operations against communities of ethnic Somalis in Eastleigh.

Lack of Accountability and the International Criminal Court

Kenya had pledged to give its position within a few months on the need to fully cooperate with the ICC investigations and had accepted a broad range of recommendations to end impunity during its previous UPR in 2010.

President Kenyatta, his deputy William Ruto, and former radio journalist Joshua arap Sang are facing charges of crimes against humanity at the ICC for their alleged roles in the 2007 – 2008 post-election violence. Ruto and Sang's trial began in September 2013.

Kenyatta's trial has been postponed until October 2014 after the prosecutor requested more time for further investigation after witnesses withdrew and for cooperation by the government in disclosing financial documents related to the case. Pervasive witness interference and intimidation has dogged inquiries into the post-election violence in Kenya, and the ICC prosecution has contended that an anti-ICC climate in Kenya has been a factor undermining its investigations against Kenyatta.

While Kenya has pledged to continue cooperating with the ICC, since the 2013 election it also has actively campaigned at the United Nations Security Council and the African Union to have the cases dropped, deferred, or referred to a local justice mechanism. In September 2013, the National Assembly and the Senate approved a motion calling on the Kenyan government to withdraw from the Rome Statute, the treaty establishing the ICC, which Kenya ratified in 2005. The President has not responded to the motions of withdrawal.

The ICC opened an investigation in 2010, after the Kenyan parliament voted against a bill that would have established a domestic tribunal to try those responsible. In August 2012, a committee appointed by the director of public prosecutions said there was not sufficient

evidence in the 5, 000 files it had reviewed to sustain criminal prosecutions, and the Attorney-General said in 2014 that it would be difficult to take anyone to court without evidence.

In 2012, the Chief Justice announced plans to set up an International Crimes Division to deal with post-election violence and other related cases in the future, but the Judicial Service Commission has since said it is still assessing the modalities of setting up the division.

Lack of accountability is a much wider problem in Kenya beyond the post-election violence. There has been no action from the authorities on the abuses by the military during its operation in Mt Elgon in 2008. Most victims of police killings and other injustices have not been able to secure justice or the perpetrators held to account.

Rights of Lesbian, Gay, Bi-Sexual and Transgender People

There is a clear failure by the state to protect LGBT persons from discrimination both in policy and legislation. During the 2010 UPR, Kenya flatly rejected the recommendation to provide mechanisms for the protection of LGBTI, arguing that same-sex unions were culturally unacceptable in Kenya.

The most reported forms of abuse against LGBTI persons in Kenya include *inter alia*, physical violence, sexual assault and rape, extortion and blackmail, intimidation, threats and harassment, verbal abuse and hate speech, denial of services and rejection by family. Police and municipal security agents have been singled out as primary perpetrators of abuse including physical and sexual violence, extortion of money or sexual favors in exchange for freedom; arbitrary arrest and detention on trumped up charges for non-payment; intimidation and deliberate humiliation on LGBTI members of the community.

Same-sex sexual conduct is criminalized in Kenya. In the coastal regions of Mombasa, Kilifi and Malindi the municipal by-laws provide further criminal sanctions against "homosexuality". These criminal sanctions against same-sex conduct exacerbate abuses by police and other state agents, who subject LGBTI persons to harassment, extortion, arbitrary arrest and detention without charge or on trumped up charges, denial of services, sexual assault and rape.

LGBTI male sex workers suffer double jeopardy as they are targeted for blackmail and are frequently asked for bribes or sexual favors by police in exchange for their freedom. Attempts to report these cases have yielded no results as police fail to investigate and bring the perpetrators to justice.

Recommendations:

On extrajudicial killings and other violations by police:

- Strengthen internal accountability mechanism for all security agencies and increase the role of civilian oversight;
- Investigate and prosecute members of security agencies found responsible for abuses and strictly hold section commanders accountable;

- Investigate the killing of at least three Muslim clerics in Mombasa and other extrajudicial killings and disappearances of alleged terrorism suspects, and hold those responsible to account.

On attacks on Human Rights Defenders and Witnesses:

- Investigate and prosecute attacks on human rights defenders and witnesses to ICC investigations;
- Reject any bill containing restrictions on the activities of and funding for non-governmental organizations, such as those contained in the PBO (amendments) bill 2013.

On refugee rights:

- Respect national laws and international treaties on the rights of refugees to which Kenya is a party. These include non-refoulement and respect for basic human rights and human dignity;
- Investigate reports of abuses against refugees by security officers during the operations in Nairobi's Eastleigh neighborhood, in Mombasa, and elsewhere;
- Abide by the Kenyan High Court's ruling of July 26, 2013 quashing the government's December 2012 order for urban refugees to relocate to refugee camps;
- Restart the Department of Refugee Affairs' urban refugee registration procedures so that any Somali or other foreign national wishing to claim asylum can do so, including if arrested on suspicion of unlawful presence in Kenya or give UNHCR access to all such persons.

On lack of accountability and the ICC

- Fully cooperate with the ICC in order to allow cases involving crimes committed during the post-election violence before the ICC to proceed smoothly;
- Investigate and prosecute perpetrators of serious crimes committed during the 2007 – 2008 post-election violence in accordance with international standards.

On LGBT rights

- Publicly denounce the violence and abuse of LGBT and other minority groups by police and other security agents;
- Review existing laws that penalize same-sex conduct and provide adequate protection to LGBT persons;

- Support appropriate and quality healthcare programs, including HIV prevention, for LGBT and sex workers using evidence-based and human rights-based approaches.