



Africa Center for Engendered Security



Joint Submission to the Human Rights Council

4th Cycle of Universal Periodic Review (UPR) of the Republic of Kenya

This report is submitted on behalf of The Africa Center for Engendered Security (ACES, formerly SOWED Kenya); Collaboration of Women in Development (CWID); Centre for Human Rights and Policy Studies (CHRIPS); Community Development and Sustainability Organization (CDS Kenya); and **Rights & Security International (RSI)**.

11 October 2024

A. Introduction

1. The following submission to the Human Rights Council regarding the Republic of Kenya is compiled and endorsed by Kenya-based civil society organisations (CSOs) located in Nairobi, Mombasa, and the Mount Elgon region, with support from Rights & Security International (RSI), a London-based human rights charity. This report details human rights violations and concerns arising from the implementation of the Kenyan State's national security policies since the country's last Universal Periodic Review (UPR) in January 2020.
2. In particular, the above-named organisations raise concerns about alleged enforced disappearances and extrajudicial executions by security forces, the use of excessive force against protesters in the context of the 2024 demonstrations against the government's policies, and the use of counter-terrorism legislation to profile CSOs and minority groups and restrict civic freedoms.

B. Follow up to the previous review

3. In its third Periodic Review, Kenya received 319 recommendations from 118 State delegations. Forty-six percent of these recommendations related to Sustainable Development Goals (SDGs) 16 on Peace, Justice, and Strong Institutions. The State accepted and committed to implementing 263 of the recommendations.
4. For example, Kenya accepted 49 recommendations relating to the prevention of torture and other cruel, inhumane or degrading treatment or punishment; extrajudicial executions and enforced disappearances; the investigation of allegations of these crimes and the reparation and rehabilitation of victims. It also accepted four recommendations to provide adequate human rights training to law enforcement officials to ensure they operate in accordance with the Kenyan Constitution and international human rights standards.¹

¹ See recommendations received in Kenya's third cycle review, 35th session: 142.56 Enhance human rights training and awareness for law enforcement officials to end all violations, including excessive or arbitrary use of force and extrajudicial killings, and bring all those responsible for human rights violations to justice, as well as continuing police reforms (Finland); 142.90 Continue the efforts to put an end to extrajudicial killings by police officers, including in the context of counter-terrorism measures (Republic of Korea); 142.138 Take preventive measures and ensure comprehensive investigations into all allegations of torture, ill-treatment and extrajudicial killings by security forces and strictly hold perpetrators accountable (Austria); 142.140 Strengthen oversight of the State security forces and properly investigate the allegations against the State security forces of torture, extrajudicial killings and arbitrary detention (Czechia); 142.142 Take further steps to address all allegations of extrajudicial killings, enforced disappearance and excessive use of force by police, particularly during counter-terrorism initiatives, and ensure the prosecution of offenders (Botswana); 142.145 Investigate reported cases of extrajudicial killings and police violence and provide for victims' rehabilitation (Germany); 142.146 Investigate complaints about cases of extrajudicial executions, enforced disappearance and excessive use of force by security forces (Costa Rica).

5. Kenya also accepted and agreed to implement one recommendation to “strengthen counter-terrorism measures *in conformity with the law and international standards*”² as well as five recommendations to strengthen protections for civil society actors, while ensuring that those in the civic space enjoy the fundamental rights guaranteed by the Constitution, such as the freedoms of expression, association, and assembly.³
6. However, the above-named organisations remain concerned that there continue to be reports of enforced disappearances and extrajudicial executions. Research also indicates that security officials consistently use excessive force against protesters, with hundreds reportedly injured and scores reportedly killed during the anti-government protests in 2024 alone. It appears that the vast majority of these grave human rights violations have never been investigated, and the perpetrators have not been brought to justice.
7. Furthermore, Kenyan authorities continue to use counter-terrorism legislation to profile minority groups, restrict civic freedoms and target opposition groups and human rights defenders (HRDs).
8. We submit that Kenya’s existing security policies and legislation, whose stated aim is to counter threats of terrorism and other associated activities, are not aligned with international human rights standards on protecting the right to life, or sufficient to fulfil the State’s obligations to effectively prohibit extrajudicial executions and enforced disappearances. Furthermore, the State’s increased harassment and intimidation of civil society actors – whose collective goal is to enhance transparency and accountability regarding these counter-terrorism frameworks -- undermines the international and constitutional human rights obligations to respect the rights to freedom of expression, association, and assembly.

² See recommendation 142.79 Continue strengthening counter-terrorism measures in conformity with the law and international standards (Sierra Leone).

³ The Republic of Kenya, ‘[Constitution of Kenya, 2010](#)’ (*National Council for Law Reporting with the Authority of the Attorney-General, 2010*). See also recommendations received in Kenya’s third cycle review, 35th session: 142.158 Guarantee full respect of the rights to freedom of expression and of association, by adopting comprehensive legislation on the protection of human rights defenders and by investigating all complaints of alleged violations (Uruguay); 142.157 Take further measures towards ensuring the safety of journalists, as well as towards guaranteeing the freedoms of expression, of the press, of association and of peaceful assembly (Greece); 142.163 Continue to be open to civil society and protect human rights defenders (Tunisia); 142.155 Implement the recommendations of the 2017 European Union Election Observation Mission, especially to strengthen the independence of the media and journalists and to provide protection for civil society (Czechia); 142.160 Create a safe and enabling environment in which human rights defenders and civil society can operate free from hindrance and insecurity, including through the full operationalization of the Public Benefits Organizations Act (2013) (Ireland).

C. The human rights situation on the ground

Extrajudicial executions and enforced disappearances

9. Despite domestic legislation to protect people in custody and prevent and prosecute cases of torture and ill-treatment, extrajudicial executions and enforced disappearances,⁴ there continue to be reports of extrajudicial executions by security forces.⁵ Since Kenya's last UPR, human rights organisations have documented over 600 extrajudicial executions⁶ in the context of excessive use of force, including unlawful lethal force, against protesters demonstrating against the government's policies.
10. Civil society organisations have also expressed concerns about the disappearance of protesters during the country's recent demonstrations. According to published data, at least 32 people disappeared in the wake of the 2024 protests,⁷ raising concerns that opponents are being targeted for exercising their rights to freedom of expression and association.
11. Kenyan authorities are reportedly not holding law enforcement agencies accountable for their involvement in forced disappearances.⁸ Data shows that of the ten reported enforced disappearances in 2023, no security officials involved in the operations have been arrested or tried for the disappearances.⁹ More recently, after the protests in 2024, Kenya's former Inspector General of Police -- Gilbert Masengeli -- who was convicted for his involvement in the disappearance of three protesters, has not yet been detained to serve his sentence. Similarly, the judge calling for Masengeli to appear before the court, Hon. Justice Lawrence Mugambi, was dismissed shortly after issuing the order, raising concerns from civil society actors about the government's role in accountability for violations committed by security officials.¹⁰
12. Despite these worrying reports, in the last UPR cycle, Kenya merely noted two recommendations to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and stated that this measure could not be prioritised within the four-year UPR cycle due to the complexities of ratifying new legislation.¹¹ In Kenya's mid-term UPR report, the

⁴ See Kenya's relevant legislation, including the Independent Police Oversight Authority Act (IPOA) 2011; the Prevention of Torture Act, (2017); Witness Protection Act (Cap. 79), the Victims Protection Act (2014); National Police Service Act (2011); Penal Code (Cap 63) and, Persons Deprived of Liberty Act (2014).

⁵ Missing Voices, '[End Police Impunity, 2023 Annual Report](#)' (Missing Voices, 2024).

⁶ Missing Voices, '[Statistics](#)' (Missing Voices, 2024).

⁷ Kenya National Commission on Human Rights, '[Update on the Status of Human Rights in Kenya during the Anti-Finance Bill Protests, Monday 1st July, 2024](#)' (KNCHR, 2024).

⁸ Ibid. See also Amnesty International, '[Kenya Security Services Must Respect Fundamental Rights During Nationwide Protests](#)' (AI, 2024).

⁹ Missing Voices, '[End Police Impunity, 2023 Annual Report](#)' (Missing Voices, 2024).

¹⁰ Haki Africa, 'Haki Africa's Statement on the Withdrawal of [Security for Hon. Justice Lawrence Mugambi](#)' (Haki Africa, 2024).

¹¹ See recommendations received in Kenya's third cycle review, 35th session: 144.10 Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (France); 144.11 Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (Honduras) (Seychelles). See also Kenya's third cycle mid-term report to the Office of the High Commissioner for Human Rights (OHCHR), '[4th Cycle Mid-Term Report under the Universal Periodic Review \(UPR\)](#)' (OHCHR, no date).

State claimed that efforts were being made to criminalise enforced disappearances at the national level but acknowledged that ratification of the Convention at the international level has yet to progress.¹²

Excessive use of force during demonstrations against government's policies

13. According to reports, security forces used excessive force, including unlawful lethal force, against HRDs and activists participating in mass demonstrations in 2024 against the government's plans to increase public taxes.¹³ The authorities justified this response to the protests by stating that participants were a threat to national security, while aiming to penalise civil society actors who were exercising their constitutional rights to freedoms of expression, association, and assembly.¹⁴
14. As of July 2024, reports indicate that law enforcement claimed the lives of 39 people during the protests, while another 361 people were injured.¹⁵ Most cases of demonstrators injured or killed during the protests apparently have yet to be investigated and the alleged perpetrators have not been brought to justice, raising further concerns about the authorities' commitment to ensuring accountability for these human rights violations.¹⁶

Use of counter-terrorism legislation to restrict the civic space

15. Additionally, civil society actors are concerned that Kenya's primary counter-terrorism legislation, the Prevention of Terrorism Act 2012 (POTA), is incompatible with the State's commitments to safeguard civic space and constitutional and human rights due to the law's ambiguity and inconsistent implementation at the national and county levels.¹⁷
16. The law fails to comprehensively define 'terrorism' to a regionally recognised or internationally agreed-upon standard, meaning that implementation by law enforcement is often arbitrary¹⁸ and can lead to discrimination and profiling. For example, reports indicate that law enforcement officials' powers under POTA to monitor and detain people they suspect of engaging in terrorism-related activities, disproportionately impact people who identify as Muslim and reside in the

¹² Ibid.

¹³ Human Rights Watch, '[Kenya: Witnesses Describe Police Killing Protesters](#)' (HRW, 2024).

¹⁴ Robbie Gramer, '[Washington Fails to Read the Room in Kenya](#)' (FP, 2024); See also the Constitution of Kenya, 2010, articles 33, 36, and 37.

¹⁵ Kenya National Commission on Human Rights, '[Update on the Status of Human Rights in Kenya during the Anti-Finance Bill Protests](#)' (KNCHR, 2024).

¹⁶ Carlos Mureithi, '[Enforced Disappearances send a chill through Kenya's protests](#)' (The Guardian, 2024).

¹⁷ See Kenya's Prevention of Terrorism Act (2012).

¹⁸ Karanja Muraya, 'Exploring Eastern Africa's Landscape: A Scoping Study on an Independent Civil Society-UN Counter-Terrorism Engagement Mechanism' (ACES Africa Center, 2023), on file. See also Global Center on Cooperative Security and Rights & Security International, '[Independent Civil Society-UN Counterterrorism Engagement – A Scoping Study](#)' (RSI, 2024).

country's coastal regions,¹⁹ and people of Somali descent living in regions close to the Kenya-Somalia border.²⁰

17. The arbitrary implementation of the POTA is also reportedly used to silence HRDs speaking in opposition to the government.²¹ Under POTA, law enforcement agencies have broad powers to police activities and individuals they deem to be terrorism-related, leading to fears among CSOs and HRDs that they might be labelled a 'terrorist' or subjected to other forms retaliation from the authorities for carrying out their legitimate human rights advocacy work.²² For example, when calling for increased transparency on the government's approach to enforcing POTA and how its applied to protesters and minority groups, CSOs and HRDs report facing enhanced scrutiny and other reprisals, including intimidation, arbitrary arrests and detentions, and administrative measures to hinder operations.²³

D. Recommendations

Based on the research and analysis presented above, we call on Member States to recommend that the government of Kenya:

- Amend the Prevention of Terrorism Act 2012 (POTA) to bring it into line with international human rights laws and standards;
- Develop a comprehensive and adequately funded framework to addressing violence – including terrorism offences – through a rights-based approach in consultation with civil society;
- Investigate thoroughly and independently all complaints of excessive use of force, enforced disappearance, extrajudicial execution, and arbitrary detention; bring all perpetrators to justice and offer adequate reparation to survivors and their relatives;
- Respect the rights to freedom of expression, association and assembly in line with international human rights laws and standards;
- Ratify all relevant international human rights conventions and instruments, including the International Convention for the Protection of All Persons from Enforced Disappearance, and the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁹ Collaboration of Women in Development (CWID), '[Awakening the Silent Voices - Strengthening the Implementation of POTA Amendments and PCVE in Mombasa](#)' (CWID, 2023), pp. 20.

²⁰ Ibid.

²¹ Rights & Security International, '[Addressing Human Rights Concerns from Kenya's Counter-terrorism Laws and Policies](#)' Country Profile Report (RSI, 2022), pp. 17, para 61.

²² Collaboration of Women in Development (CWID), '[Awakening the Silent Voices - Strengthening the Implementation of POTA Amendments and PCVE in Mombasa](#)' (CWID, 2023), pp. 27 – 30.

²³ Rights & Security International, '[Addressing Human Rights Concerns from Kenya's Counter-terrorism Laws and Policies](#)' Country Profile Report (RSI, 2022), pp. 17, para 61. See also Denis Mwangi, '[Boniface Mwangi and other activists arrested in company of former CJ Mutunga](#)' (Pulse Live, 2024); Rights & Security International, '[Statement on unlawful detentions of activists in Kenya](#)' (RSI, 2024).