



Joint Submission to the UN Universal Periodic Review

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Republic of Kenya

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**Joint Submission by CIVICUS: World Alliance for Citizen
Participation, NGO in General Consultative Status with ECOSOC**

And

National Coalition of Human Rights Defenders –Kenya

And

North Rift Human Rights Network

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1. (A) Introduction

- 1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen's freedom of association are threatened.
- 1.2** The National Coalition for Human Rights Defenders NCHRD-K (NCHRD-K) is a non-governmental organisation registered as a Trust in Kenya. It was established in November 2007 to strengthen the work of human rights defenders (HRDs) in the country by reducing their vulnerability to the risk of persecution and by enhancing their capacity to effectively defend human rights. The founding of the National Coalition was informed by a number of issues and challenges that human rights defenders faced individually in the course of their work that called for better collaboration and support.
- 1.3** North Rift Human Rights Network is a non-profit, voluntary human rights organization that was formed in 2004 and legally registered in 2006 to promote, protect and enhance principles of non-discrimination, human rights, rule of law, right to freedom of opinion and expression for the North Rift region. It also works to create a culture of peace and integration through human rights education and training with a special focus on monitoring, information sharing and networking.
- 1.4** During its initial examination under the Universal Periodic Review (UPR) in May 2010, the Republic of Kenya fully accepted 128 recommendations including commitments to take measures to safeguard the work of human rights defenders, investigate human rights violations committed by security agents, ensure the effective protection of human rights defenders and investigate harassment and attacks against journalists. Kenya equally agreed to extend an invitation to the UN Special Rapporteur on Human Rights Defenders.¹ However, despite these explicit commitments, more than four years after Kenya's previous review under the UPR, Kenyan authorities have not fully implemented all these recommendations as human rights defenders, journalists and activists continue to face harassment and persecution for the work they do.
- 1.5** CIVICUS, (NCHRD-K) and the North Rift Human Rights Network are deeply concerned about the environment in which human rights defenders and civil society activists operate in Kenya and discuss threats they face in the exercise of their fundamental rights. Scores of human rights defenders, civil society activists and journalists working on sensitive issues like corruption, human rights, land rights, gender rights and electoral outcomes are threatened and intimidated by government officials, organised political groups and powerful businesses. It is a matter of deep concern that human rights defenders engaged in legitimate activities are being subjected to reprisals by state

¹ 'Report of the Working Group on the Universal Periodic Review, Kenya , Human Rights Council, 15th Session of the Universal Periodic Review, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/144/88/PDF/G1014488.pdf?OpenElement>, 17 June 2010, accessed 2 June 2014.

officials. We are also concerned about stringent restrictions on freedom of association and assembly and the use of violence to counter peaceful protests.

1.6 CIVICUS, NCHRD-K and the North Rift Human Rights Network are greatly concerned about attempts to use legislative and extra-legal measures to curb civil society activism, civil society funding and the freedom of association. This is intended to exert control and oversight over the activities of civil society groups and clamp down on dissenting voices.

- In section B, CIVICUS, NCHRD-K and the North Rift Human Rights Network express concerns regarding judicial persecution, harassment and intimidation of human rights defenders and civil society activists.
- In section C, CIVICUS, NCHRD-K and the North Rift Human rights Network highlight concerns related to restrictions on freedom of expression and attacks on journalists.
- In section D, CIVICUS, NCHRD-K and the North Rift Human Rights Network express concerns over attacks on freedom of assembly and association.
- In section E, CIVICUS, NCHRD-K and the North Rift Human Rights Network make a number of recommendations in the areas of concern listed.

2. (B) Concerns regarding judicial persecution, harassment and intimidation of members of Civil Society Organisations (CSOs).

2.1 Article 12 of the United Nations Declaration on Human Rights, mandates member states to take necessary measures to protect human rights defenders. The International Covenant on Civil and Political Rights (ICCPR) to which Kenya is a party guarantees the freedoms of expression, association and assembly. However, it is a matter of deep concern that human rights defenders and civil society activists are often unfairly persecuted, intimidated, harassed and threatened in Kenya. In certain instances, civil society gatherings are monitored by government officials. Civil society representatives who voice strong opinions on critical issues affecting civil society are targeted.

2.2 On 16 May 2014, human rights defender Joel Ogada was sentenced to seven years in prison for arson. He is a member of the Malindi Rights Forum (MRF) which focuses on the protection of land rights of farmers in Marereni, Kilifi County. Farmers regularly express concerns about harassment by the authorities and threats of eviction by commercial firms operating in the area. He was found guilty on 18 February 2013 but his trial was marred with discrepancies as he only got legal representation in the latter stages of court proceedings. Joel Ogada has been arrested on several occasions in the past and his sentencing appears to have a strong correlation to his activities as a human rights defender.

- 2.3** On 21 January 2014 four armed men attempted to break into the house of community/gender activist and member of the Bunge La Wamama Mashinani (Women’s Parliament at the Grassroots) Amina Mohamed. She had previously received threatening phone calls warning her that she will be punished for her campaigns against gender-based violence.² The threats to her life stem from a sexual assault case involving a refugee living in Nairobi. The case is currently in a Kenyan court and Amina is involved in its proceedings. She was also warned that members of her family will be assaulted if she does not withdraw from the case. After the attempted break-in she reported the matter to the police but they refused to take a statement from her. It is concerning that in this instance, the authorities failed to discharge their duty to protect her from intimidation by immediately initiating an investigation to bring the perpetrators to justice.
- 2.4** On 12 February 2014, human rights defender Muchangi Nyaga was arrested by Kenyan police for his human rights activities. He is coordinator of Ghetto-Green Foundation, an NGO that works in the Huruma slums to empower the youth. The police initially stormed his house and confiscated documents before proceeding to detain him at the Huruma police station. Injuries visible on his face indicate that he was physically assaulted and tortured while in detention.
- 2.5** On 25 February 2014, Emily Kwamboka, a grassroots human rights activist from Mathare and founding member of the Sauti Yetu Political Debates Programme was threatened over the phone for her human rights activities. The Sauti Yetu Political Debates Programme is a platform that initially had a mandate to promote political debates and later transformed into a forum which advocates for accountability from elected officials. On 20 February 2014, she was threatened with a gun by the representative of the County Ward as she coordinated a forum on accountability. Her assailant threatened to silence her if she continued with her activities. Between 20 February and 25 February 2014 received threatening calls on her phone. She reported the threats to the police and later went into hiding.
- 2.6** On 20 September 2013, a gang calling itself the Nyaribo Support Group threatened to burn the house of Maina Kiai- former Chair of the Kenya National Commission on Human Rights and currently the UN Special Rapporteur on the Rights of Freedom of Assembly and Association. The threats emanated from false reports that Maina Kiai would testify in the trial of President Uhuru Kenyatta by the International Criminal Court (ICC) at The Hague.³ In March 2013, the Kenyan president’s director of digital media and the diaspora published a list of representatives of civil society and members of the political opposition, describing them as “evil” backing ICC procedures.

² “Kenya: tentative d’agression au domicile de la defenseuse des droits humains Mme Amina Mohamed,” 24 January 2014, <http://awid-org.sitepreview.ca/fre/Library/Kenya-Tentative-d-agression-au-domicile-de-la-defenseuse-des-droits-humains-Mme-Amina-Mohamed>. Accessed 9 June 2014.

³ “My life in danger over ICC cases: Maina Kiai,” *Daily Nation* 20 September 2013, <http://mobile.nation.co.ke/News/My-life-in-danger-over-ICC-cases-Maina-Kiai/-/1950946/2000700/-/format/xhtml/-/14m13t/-/index.html>. Accessed 10 June 2014.

- 2.7** On 17 September 2013, human rights lawyer Peter Wanyoni Wanyama was assassinated by unidentified gunmen outside his home in Bungoma in Western Kenya.⁴ He had represented a protester shot by the police during protests in March 2013. Peter Wanyoni Wanyama had represented victims of police violence in the past. Prior to his death, he had received death threats in relation to the cases he handled involving human rights issues.
- 2.8** In the same light, Hassan Guyo, a human rights activist and founder of Strategies for Northern Development (SND) was assassinated by state security forces on 7 August 2013. Hassan had gone to carry out investigations at the scene of violent protests in Moyale in the aftermath of the demonstrations against the arrest of the chief of Bori location which had been brutally repressed by the Kenyan Defence Force and National Police Service in Moyale, Marsabit County. He was shot in his back in an unprovoked attack as he was following orders from the military stationed in the area to leave the area. The security forces then prevented anyone from attending to Hassan or from taking him to the hospital while he lay wounded from gunshot wounds.⁵
- 2.9** On 31 May 2013, Lydia Mukami human rights activist and Chair of MWEA Foundation, a platform for rice farmers in MWEA constituency which campaigns against the Kenya Irrigation Act (1996) was attacked by four unidentified men and questioned about a case which was before the Supreme Court at the time. The Irrigation Act provides restrictions in land ownership by women. The case in question was a petition submitted on 1 November 2012 by MWEA against the Ministry of Lands. She was held for several hours by her assailants against her wish before they dumped her in the bush in the early hours of the morning.
- 2.10** On 9 November 2012, human rights defender Okiya Omtatah Okoiti, Director of Kenyans for Justice and Development (KEJUDE) – an NGO working to promote transparency and accountability was physically assaulted and seriously injured by unidentified assailants in Nairobi. He was then warned by the assailants to withdraw a lawsuit he initiated to request for transparency in the procurement of biometric voter registration kits because of issues of lack of accountability in the procurement process. Appalled by the drastic increases in the costs of the kits, he had gone to court to halt the process of procuring them because of allegations of corruption.

3. (C) Concerns regarding restrictions on freedom of expression and attacks on journalists

- 3.1** Article 33 of the Constitution of the Republic of Kenya guarantees the right to freedom of expression. Article 9 of the African Charter on Human and Peoples Rights (ACHPR) makes provisions for citizens to express and disseminate opinions and views within the law. Article 21 of the ICCPR guarantees the right to freedom of expression and opinion. Yet threats to and attacks on

⁴ “Lawyer in Kombo’s petition case shot dead,” 5 June 2014, *Star FM Kenya*, <http://starfm.co.ke/2013/09/lawyer-in-kombos-petition-case-shot-dead/>. Accessed 12 June 2014.

journalists persist in Kenya forcing journalists working on sensitive issues to resort to self-censorship.

- 3.2** Of critical concern are attempts made by some of Kenya's legislators to introduce draconian media bills with the aim of curtailing media freedoms and reversing any gains made in promoting freedom of expression. In December 2013, the Parliament passed the Information and Communication (Amendment) Bill and the Media Council Bill 2013 which sought to provide the government with extensive powers over the media. The Media Council Act 2013 proposed the creation of a Media Council and Complaints Commission with the authority to prohibit media content found to be "prejudicial to public or national interest." In addition, the Media Council would have the authority to "prescribe standards of journalists, develop and regulate ethical and disciplinary standards for journalists, media practitioners and media enterprises."⁶
- 3.3** The Information and Communications Bill 2013 has propositions to establish a Communications and Multimedia Appeals Tribunal under the state-controlled Communications Authority with wide ranging powers to impose fines of up to KES 500.000 (US \$ 5630) to journalists and 20 million Shillings to media houses, seize property and revoke the accreditation of media agencies and journalists. The said fines could be imposed based on anonymous complaints against journalists or media agencies making it impossible for the journalists to identify the complainants.
- 3.4** Journalists held mass demonstrations to protest against the above-mentioned Bills and the Kenyan Journalists Association, Kenyan Correspondents Association and the main media houses filed a petition with the High Court arguing that the Bills violate Article 34 of the Constitution.⁷ On 31 January 2014, the High Court stopped the implementation of the Bills pending considerations of the legal questions by the court. It is deeply troubling that the Kenyan Parliament could pass such repressive legislation which violates media freedom, which is fundamental to the legitimacy of the Kenyan state.⁸
- 3.5** On 7 May 2014, Lydia Ngoolo of the Star Newspaper went into hiding after receiving threatening phone calls. She was warned to stop writing after publishing an article on 28 April 2014 calling on the security agencies to investigate a deserted house in Mwingi. She wrote that there were suspicions that the building was being used for illegal activities and by members of the extremist group Al-Shabaab. The police only promised to investigate the threats but did not follow-up with appropriate action.⁹

⁶ Kenya Gazette Supplement, National Assembly Bills 2013, Nairobi, November 22, 2013. <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2013/THEMEDIACOUNCILBILL.pdf>, Accessed 10 June 2014.

⁷ "Media Council case set for Friday," *The Star*, 29 January 2014 <http://www.the-star.co.ke/news/article-152784/media-council-case-ruling-set-friday>. Accessed 11 June 2014.

⁸ "Throw out the bill media urge Uhuru," *Daily Nation*, 13 November 2013. <http://mobile.nation.co.ke/News/Shelve-Bills-media-lobby-urges-Uhuru-Kenyatta/-/1950946/2072208/-/format/xhtml/-/koflwx/-/index.html>. Accessed 30 May 2014.

⁹ Musembi Nzengu, "Mwingi CID ready to probe threats to Star Journalist's life," *The Star*, 20 May 2014. <http://www.the-star.co.ke/news/article-167772/mwingi-cid-ready-probe-threats-star-journalists-life>. Date

- 3.6** In June 2013, journalists were ordered to vacate the Media Centre in the National Assembly as they attempted to cover deliberations following the election of the new Parliament in March 2013. Attempts by some journalists to conduct interviews outside of the Media Centre were rebuffed by the clerk of the National Assembly and the journalists were informed that proceedings in Parliament would be covered by the state-owned media.¹⁰ Over the last three years the Media Centre had been used by journalists to report on proceedings in Parliament and refusal to grant them access demonstrates the intention of the authorities to intimidate journalists and prevent them from doing their jobs. The parliamentarians were mindful of plans by the media to report on demands to increase their salaries.
- 3.7** On 19 April 2013, Mohammed Ali and John-Allan Namu of the KTN Television network were threatened after they reported on the death of the former Interior Minister George Saitoti following a helicopter crash on 10 June 2012. The report intimated that the death occurred under suspicious circumstances. The callers warned both journalists that they were being watched and threatened them with death.
- 3.8** On 20 January 2013, Dennis Okeyo of the *Daily Nation* and John Otanga of *Nation TV* were physically assaulted by members of Kenya's paramilitary military force – the General Service Unit, as they made attempts to report on skirmishes between political factions in the Kibera slums in Nairobi. The journalists were beaten up and their cash and memory card from their camera were confiscated by the military.¹¹
- 3.9** James Wakahiu of *the Star* received death threats in May 2012 in relation to his reporting on the ICC cases. He was threatened with death via emails and warned that a bomb will be detonated in the office of the Star newspaper. The threats made to bomb the office were reported to the police in Kilimani Police Station but no action was taken.
- 3.10** On 10 May 2012, Joel Eshikumo of the *Weekly Citizen* was threatened by businessman Armstrong Pino over pictures taken of the businessman in court on 20 April 2012. Joel had previously received threatening phone calls from anonymous sources and the callers warned that his house will be burnt and he will be killed because of the photos taken of Pino in court. The threats were made even after the judge presiding over the case had given Joel the go-ahead to take pictures as a journalist.

4. (D) Concerns over restrictions on freedom of assembly and association

- 4.1** Article 21 of the ICCPR guarantees the right to peaceful assembly while Article 22 guarantees the rights “to freedom of association with others including the right to form and join trade unions for the protection of their interests.” Article 36 of the Kenyan Constitution recognises the right to create,

accessed 2 June 2014

¹⁰ “Journalists kicked out of Kenyan Parliament,” *Capital News*, 5 June 2013, <http://www.capitalfm.co.ke/news/2013/06/journalists-kicked-out-of-kenyan-parliament>. Accessed 9 June 2014.

¹¹ “Kenyan Journalists attacked while covering riots.” *The Star*, 23 January 2013. http://www.ifex.org/kenya/2013/01/23/coverage_clashes. Accessed 29 May 2014.

join and participate in the activities of associations. Article 37 of the Constitution states that “every person has the right peaceably and unarmed to assemble, demonstrate, to picket and to present petitions to public authorities.” Despite these progressive provisions, the authorities in Kenya have often made attempts to pass restrictive legislation to inhibit freedom of association and assembly and use brutal force to disperse protesters advocating for change.

- 4.2** On 30 October 2013, the Miscellaneous Amendment Bill 2013 to the Public Benefit Organisations (PBO) Act 2013 was forwarded by the Office of the Attorney General of Kenya for its introduction to the National Assembly. It was aimed at amending sections of the PBO Act. Among others, the amendments sought to prevent NGOs and PBOs from getting more than 15% funding from external donors. It provided restrictions and increased bureaucratic processes for NGOs receiving funding as it stipulated that all funding from foreign donors be received through the Public Benefits Organisation Federation.¹² The Act also granted powers to the Kenyan authorities to “impose terms and conditions for the granting of certificates of registration, permits of operation and public organisations status.” It proposed changes to the Regulatory Authority’s governance body to favour the executive and provide the authorities with wide and discretionary powers. The implications of the law would have been very harsh on civil society and freedom of association. For example, about 240 000 jobs would have been lost, 20 million citizens prevented from accessing health care and several civil society organisations closed or forced to function covertly.¹³ The Bill was drafted without consultations with civil society and was essentially meant to completely stifle criticism of the government by the civil society sector in Kenya.
- 4.3** On 4 December 2013, the Bill was withdrawn by the Parliament and the move was approved by the Parliament’s Majority Leader. The withdrawal of the Bill came after Members of Parliament on both sides of Kenya’s political divide voiced concerns and argued that the Bill was unconstitutional. It is a matter of deep concern that such draconian Bill was introduced in the first place.
- 4.4** On 13 February 2014, the police forcefully dispersed protesters led by civil society groups on the “state of the nation,” at Uhuru Park in Nairobi. The protesters raised concerns about corruption in the government, unemployment and the challenges with the leadership in the country. Security forces used tear gas to disperse the protests as they made attempts to march from Uhuru Park to the National Assembly even though the protesters had notified the authorities about the planned protests at least two weeks in advance. Activists Wilfred Olal, Gacheke Gachichi, John Koome and Nelson Mandela were arrested and later charged with disorderly behaviour while in a

¹² “International NGO adds voice to opposition of regulatory bill,” *Daily Nation*, 13 November 2013. <http://www.nation.co.ke/news/politics/International-NGO-adds-voice-to-opposition-of-regulatory-bill/-/1064/2071872/-/xpwfud/-/index.html>. Accessed, 9 June 2014.

¹³ “In Kenya, averting a move to strangle civil society with financial noose,” *Open Democracy*, 18 December 2013, <http://www.opendemocracy.net/openglobalrights/maina-kiai/in-kenya-averting-move-to-strangle-civil-society-with-financial-noose>. Accessed 11 June, 2014.

police building and for resisting arrest. They were asked to pay 200,000 Kenyan Shillings as bail (approximately US \$ 2250).¹⁴

- 4.5 On 14 November 2013, a coalition of civil society organisations was denied permission to hold demonstrations against the Information and Communications Bill and Amendments to the Public Benefits Organisation Bill. The request for permission was submitted two days before the planned demonstrations but the police indicated that sufficient time was not provided for consultation.
- 4.6 On 14 May 2013, authorities used brute force in dispersing a demonstration by civil society against increases in the salaries of Members of Parliament. Tagged “occupy parliament,” the protests were organised by civil society groups and they used life pigs to demonstrate the greed of parliamentarians. The police used tear gas to disperse the crowds and 17 protesters were arrested in the process.
- 4.7 On 28 February 2011, human rights defenders and community activists Ruth Mumbi and Victoria Atieno of the grassroots organisations Bunge La Wamama were arrested as they protested against negligence leading to the deaths of pregnant mothers at the Huruma nursing home in Nairobi. They called on the authorities to investigate the negligence at the nursing home. They were detained at Langata prison and charged with inciting violence before they were released on bail. After several postponements the case resumed at Makarada law courts on 21 February 2013 during which the judge questioned the validity of the charges.

5. (E) Recommendations to the Government of Kenya

CIVICUS, NCHRD-K and the North Rift Human Rights Network urge the Kenyan Government to create an enabling environment for civil society to operate in accordance with the rights enshrined in the ICCPR and the UN Declaration on Human Rights. At a minimum, the following conditions should be ensured: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state’s duty to protect. In light of this, the following specific recommendations are made.

5.1 Regarding judicial persecution, harassment and intimidation of members of Civil Society Organisations (CSOs)

- All cases of threats, intimidation and harassment of representatives of civil society and human rights defenders whether by state or non-state actors should be immediately and fully investigated with a view to bringing the perpetrators to justice.

¹⁴ “Four Activists Deny Uhuru Park Demo,” *Standard Digital*, http://www.standardmedia.co.ke/?articleID=2000104931&story_title=four-state-of-the-nation-protestors-charged-in-court&pageNo=1. Accessed 5 June 2014.

- Full investigations should be conducted in cases where civil society activists have been assassinated. Perpetrators should be brought to justice to deter others from targeting civil society.
- All due process in accordance with Article 14 of the ICCPR should be followed for all detained persons including representatives of civil society.
- All civil society activists and human rights defenders arrested and in detention for their human rights activities should immediately be released. The judiciary should also act on pending cases to ensure that activists are able to do their work without the interruption of lengthy court cases.
- Remove restrictions that prevent human rights defenders from submitting information on violations of human rights by government representatives and state-owned organisations to human rights bodies.

5.2 Regarding restrictions on freedom of expression and attacks on journalists

- The Information and Communication (Amendment) Bill and the Media Council Bill should be repealed in light of its compatibility with constitutional and international law provisions.
- In the future, consultations should be organised with the media, journalists and civil society when new legislation or amendments are introduced with regard to media freedoms.
- Attacks on and threats to journalists and dissenters should be publicly condemned by senior government officials to ensure protection by law enforcement agencies.
- Threats to journalists and representatives of the media should be fully investigated with a view to bringing the perpetrators to justice.
- Independent media agencies and journalists should be given equal access to parliamentary proceedings as this is not the sole prerogative of state-owned media.
- Government representatives should desist from making public threats to journalists and representatives of the media.

5.3 Regarding restrictions on freedom of assembly and association

- The withdrawal of the Miscellaneous Amendment Bill 2013 to the Public Benefit Organisations (PBO) Act 2013 should be permanent and any future attempts to draft legislation affecting civil society and NGOs must be done in consultation with civil society organisations to ensure that their inputs are taken into account.

- General Principles for civil society to seek, receive and use resources as put forward by the UN Special Rapporteur on Freedom of Peaceful Assembly and Association should be respected.
- Best practices on freedom of peaceful assembly should be adopted by the Kenyan Government, as put forward by the UN Special Rapporteur on the Freedom of Peaceful Assembly and Association in his thematic report (2014) must be adopted by the Kenyan government.
- Security forces in charge of crowd control should be equipped with non-lethal weapons and provided training across the board on humane means of crowd control as well as on the UN Basic Principles on the use of Force and Firearms.
- Recourse for judicial review and effective remedy should be provided including compensation in cases of unlawful denial of the right to freedom of assembly by state authorities.

5.4 Regarding access to UN Special Procedures and Mandate Holders

- A standing invitation should be extended to the UN Special Procedures, particularly to the Special Rapporteur on Human Rights Defenders, Special Rapporteur on Freedom of Expression, and Special Rapporteur on Freedom of Peaceful Assembly and Association.