

COUNTRY BRIEF: KENYA

OVERVIEW OF RECENT RESTRICTIONS TO CIVIC FREEDOMS AHEAD OF 2022 ELECTIONS



Activists calling themselves 'Njaa Revolution' (Hunger Revolution), May 2022 (Photo by Tony KARUMBA / AFP)



INTRODUCTION

Kenya's civic space rating remained '[obstructed](#)' in the People Power Under Attack [Report](#) by the CIVICUS Monitor in December 2021.

Although a vibrant and engaged civil society sector exists in the country, systemic challenges to the enabling environment continue to throttle the full exercise of civic freedoms and undermine civic space. Since the ruling party Jubilee took power in 2013, CSOs have faced major restrictions on their work due to policies aimed at muzzling civil society, such as the infamous, mass CSO deregistration undertaken in 2014 and 2015 by the state NGO Coordination Board. Since 2013, civic space in the country has been obstructed by the systematic repression of protests and protesters; attacks against journalists, the judiciary and the LGBTIQ+ community; and sporadic [deregistration](#) and vilification campaigns targeting specific CSOs.

Ahead of the most recent elections in 2017, the state NGO Board once again [embarked](#) on a deregistration campaign of vocal NGOs, such as the Kenya Human Rights Commission and the [African Centre for Open Governance](#) (AfriCOG) because of their advocacy for a transparent electoral process. Journalists and media outlets also [faced](#) hostilities and operated in an increasingly challenging environment as political tensions rose prior to the 2017 elections, with journalists reporting threats and attacks in public and from the government.

Since the 1990s, sexual and gender based violence (SGBV) has also been a recurring and vicious element of Kenyan elections. Ahead of the August 2022 elections, the International Federation for Human Rights (FIDH) and Kenya Human Rights Commission (KHRC) published a report on the trends in SGBV against women during electoral seasons. It revealed patterns of election related SGBV against women in Kenya, including gang rape by security agents. Additionally, it demonstrated that perpetrators of such acts continued to enjoy impunity.

Now, as the country gears up for general elections on 9th August 2022, the CIVICUS Monitor continues to document civic space restrictions. The unabating violations against peaceful protests, freedom of the media and expression, and increased attacks against the freedom of association for the LGBTIQ+ community, in a context of an increased risk of civic space restrictions as experienced in previous election cycles, Kenya was added to the CIVICUS Monitor [Watchlist](#) in June 2022. This brief seeks to further highlight the civic space situation in the country, particularly as it has looked in the months ahead of the election.

ABOUT THE CIVICUS MONITOR

The [CIVICUS Monitor](#), an online platform that tracks threats to civil society in countries across the globe, rates civic space – the space for civil society – in Kenya as "**Obstructed**".

The data provides the basis for civic space ratings, which are based on up-to-date information and indicators on the state of freedom of association, peaceful assembly and expression. Countries can be rated as:

CLOSED

REPRESSED

OBSTRUCTED

NARROWED

OPEN



PEACEFUL ASSEMBLY

I. Violent repression of peaceful protests

As [documented](#) on the CIVICUS Monitor, the Kenyan authorities' systemic response to protests in the country has been characterised by excessive force, despite the constitutional guarantee of the right to peaceful assembly. The police have continued to brutally disperse peaceful protests using lethal weapons, such as [live ammunition](#), and crowd control weapons, such as teargas and rubber bullets, as well as batons to assault protesters, and subject them to arbitrary and illegal detentions.

In mid-January 2022, striking inmates at the Kamiti Maximum Prison in Nairobi County were badly [beaten](#) by officers after they protested over the lack of food and restrictions on movement in the facility. The protests erupted when the prison began rationing food to the inmates as a punitive measure after three terrorism convicts escaped from the facility, sparking public outrage. According to some of the inmates, they were going up to 24 hours without food, while some of them were placed in complete isolation.

In a separate incident on 7th April 2022, police officers arrested and [beat](#) human rights defender Julius Kamau for protesting the high cost of living outside the Department of the Treasury building. Kamau held a banner reading "lower food prices", as part of the NjaaRevolution (translated to 'hunger revolution') protests that began online, where Kenyan citizens have been demonstrating against the high cost of living and inflation using the hashtag #NjaaRevolution. Similarly, four other protesters, Minoo Kya, Clinton Ojiambo, Nahashon Macharia and Anthony Kanyiri, were [arrested](#) on 9th April 2022 for protesting the high cost of living. The protesters were [detained](#) at Mwiki police station in Nairobi. In a related protest, police [dispersed](#) peaceful protests and used batons to scare demonstrators in another NjaaRevolution protest held in Mombasa on 19th April 2022.

Notably, similar incidents of the brutal repression of peaceful protests were documented in all the civic space updates published in 2021 on the [Kenya country page](#) of the CIVICUS Monitor.

As elections draw near, further repression of protests by the authorities remains worrisome and could be the anticipated government response to any election related protests this year.

II. Misapplication of the law to notify on protests

The [Public Order Act](#), a law enacted during British colonial rule when police were centralised, militarised, and had extensive powers to exert control, requires that organisers of a public procession notify authorities at least three days in advance. This provision, however, continues to be misused by law enforcement officers who unconstitutionally grant or deny permission to peacefully protest at their discretion. In many instances, authorities 'deny permission' to hold protests, as was seen on 28th June 2022 when a letter notifying the police about an intended protest by the Social Justice Centre working group, a Nairobi-based grassroots group, was [rejected](#) without explanation by the Officer Commanding Station in Kasarani. This has become the norm in many instances, despite protesters strictly complying with these provisions, and which has often been followed by excessive use of force and violent disruption of protests considered 'unpermitted'. As elections get closer, a key concern remains about the misapplication of this law to prevent any election-related protests.



ASSOCIATION

Threats to the independence of the judiciary

Recently, members of the judiciary have been subjected to [numerous attacks](#) from the political elite and the president. This was seen throughout 2021, when the president engaged in a [stand-off](#) which called into question the independence of the judiciary. In defiance to the constitution, the president refused to swear in [six judges](#) nominated by the Judicial Service Commission (JSC). Similarly, following the controversial landmark Building Bridges Initiative (BBI) judgement by the High Court, the Judiciary faced more attacks, with President Kenyatta using the 2021 Madaraka Day celebrations to [vilify the judiciary](#) over what he termed as an irresponsible ruling that negated the people's will. Such attempts by the executive office to override and disrespect the independence of the judiciary were also [seen](#) after the nullification of the presidential elections in 2017. In vilifying the judiciary, President Kenyatta stated that judicial officials were “wakora” (rogues in Swahili), insinuating that their decision had been influenced by external actors.

As the elections approach, such actions raise concern because it is vital that the judiciary is accorded the space and independence to serve as a custodian of human rights, including civic space, without intimidation and interference.

EXPRESSION

Attacks on journalists

Attacks on journalists have notably increased in the country, as documented on the Monitor over the last few years. This trend continues to be a key violation of civic space. In several instances, national and local government officials and their staff have been implicated in the attacks.

On 6th January 2022, Citizen TV journalist Martin Kosgey was [threatened](#) via text after airing a story implicating a governor's bodyguard in a murder case. Kosgey also reported that he had received information that there was a plan to harm him over the story. On 25th November 2021, it was [reported](#) that a decomposed body found on 26th October in Naivasha, Nakuru County had been confirmed to be that of veteran health and science journalist Gatonye Gathura. Prior to his death, Gathura was investigating land and health issues, but the motive for the murder remains unknown. In a separate incident on 25th November 2021, unknown assailants [attacked](#) a Standard Group journalist, Samson Wire, after he covered a story about a land ownership dispute in Parklands, Nairobi. A private developer was allegedly responsible for hiring the unknown assailants, and according to bystanders, the assailants, who carried machetes, destroyed Wire's camera and threatened to harm him more if he did not leave.

While cases of SGBV tend to increase during election periods, it affects all women on a daily basis, including journalists. According to a global media research study encompassing 20 countries, Kenyan journalists report the [highest](#) rates of sexual harassment in newsrooms. The report indicated that approximately 65% of female journalists faced physical or verbal harassment.



Restrictions on media freedom

In what has been [perceived](#) by some as an effort to extend the government's control over the media, President Uhuru Kenyatta recently [appointed](#) a new head of the Communications Authority of Kenya, thereby consolidating the ruling party's power over a strategically important body that is meant to be non-partisan. This position had remained vacant since 2019 after the president failed to appoint a replacement following the departure of the former head, Francis Wangusi. This potential political interference undermines the body's mandate to serve as a watchdog for public media and to monitor the state news agency's operations. In principle, the authority has the responsibility to ensure fair and impartial reporting around the upcoming elections; however, there is a risk that it could be used to shrink the space for independent media.

Soon after his appointment, on 22nd December 2021, the new Director General of the communications authority, Ezra Chiloba, [announced](#) the rescinding of licences of [128 broadcasters](#) for allegedly failing to comply with their licencing conditions per the Kenya Information and Communications Act 1998. In his statement announcing the measures, Chiloba stated that it was illegal to provide broadcasting services without a licence and warned the radio stations to comply within 30 days or risk having their frequencies shut down. In February 2022, the authority [announced](#) that 23 licences were to be revoked for those who failed to comply, noting that most others had rushed to comply following the December 2021 directive.

Online censorship of activists

On 27th March 2022, Twitter [suspended](#) 22 accounts belonging to human rights defenders who took part in the #NjaaRevolution campaign on the platform. Twitter's suspension notice claimed that some of these accounts were blocked because their users were allegedly acting suspiciously. The platform failed to explain to users what the word "suspicious" behaviour meant or what behaviour was considered suspicious. Twitter did not give a specific reason for accounts that were permanently suspended, instead giving a generic justification of 'violating Twitter Rules'. According to Article 19, the suspensions of these accounts amounts to [censorship](#) of civic actors at a crucial time leading up to the general elections in August 2022.



RECOMMENDATIONS

To the Kenyan government:

- Ensure an enabling environment for CSOs, media, journalists and protesters, particularly ahead of the upcoming general elections
- Immediately and unconditionally release all those who have been arbitrarily detained for exercising their right to peacefully protest and drop all the spurious charges made against peaceful protesters.
- Refrain from misapplying the law requiring notification of protests, and observe constitutional and international standards guaranteeing the right to peaceful assembly
- Refrain from the use of excessive force, physical violence, and detention of protesters and journalists.
- Security officials who use excessive force towards protesters must be effectively investigated and held accountable.
- Stop the unwarranted targeting, intimidation, and shutting down of media outlets.
- Ensure uninterrupted access to the internet and social media platforms before, during, and after the elections.
- Ensure full respect of the independence of the judiciary by all branches of government and political actors.

To the International Community:

- Call for urgent and immediate action to address fundamental rights violations of the right to peaceful assembly, expression and the rights of the LGBTIQ+ community