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**81ST ORDINARY SESSION**

**THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS,**

**BANJUL, THE GAMBIA**

**STATEMENT BY THE NATIONAL COALITION OF HUMAN RIGHTS DEFENDERS – KENYA (DEFENDERS COALITION), TO THE CHAIRPERSON OF THE AFRICAN COMMISSION OF HUMAN AND PEOPLES’ RIGHTS (ACHPR)**

**Observer Status Number: 500**

Thank you, Mr. Chairperson

Honourable Chairperson, Honourable Commissioners, State delegates, representatives of National Human Rights institutions, members of civil society organizations and distinguished participants.

The National Coalition of Human Rights Defenders – Kenya (Defenders Coalition) is grateful for the opportunity to deliver this statement on the situation of human rights defenders in Kenya. We wish to bring to the attention of the Chairperson a few issues regarding the situation of human rights defenders and civil society organizations in Kenya;

1. In the period between June and August 2024, Kenya experienced a wave of protests within different parts of the Country. The protests initially were sparked by the proposed Finance Bill of 2024, and later other issues including accountability, corruption, wastage of public resources, high cost of living and governance. Following the protests, there have been worrying trends aimed against human rights defenders and civil society organizations, where they have come under heavy scrutiny, intimidation, arbitrary arrests, use of unlawful force to include use of live ammunition and enforced disappearances largely perpetrated by state agencies or persons under their authority. Human rights defenders play a critical role in a democratic setting in ensuring that human rights and fundamental freedoms of the citizenry as provided for in the Constitution are adhered to and respected.
2. The violations occasioned are in clear contraventions of the provisions of the Constitution of Kenya and regional and international instruments to include the African Charter on Human and Peoples Rights. These rights and freedoms including the right to life, right to dignity, right to liberty and security of the person, freedom of assembly, demonstration, picketing and petition, freedom of expression, access to justice and the safeguard of personal data were violated.
3. Mr. Chairperson, there has been an increase in the misuse and abuse of laws and regulations aimed at suppressing and curtailing the activities, rights and freedoms of civil society and human rights defenders. The laws primarily abused are the Computer Misuses and Cybercrimes Act of 2018, The Public Order Act of 2013, the Public Benefits Organisations Act of 2013, the Community Groups Registration Act of 2022 and the Penal Code Chapter 63.
4. Mr. Chairperson, there has been concern in the use of state departments and government authorities to frustrate the activities of civil society and community organisations. This includes social justice centres and grassroot organisations through unnecessary bureaucratic administrative processes. These organisations are constantly requested to present various forms of documentation, including bank statements, financial audits and other legal compliance documents. These documents are demanded despite the fact the said organisations are compliant. Some of the government agencies being utilised for this are the Kenya Revenue Authority and the Directorate of Criminal Investigations. For instance, on 2nd August 2024, Angaza Jamii, a Community-Based Organisation in Kisumu, Kenya, received a letter from the Kenya Revenue Authority requesting them to share several documents, including tax exemption certificates, audited accounts, payment vouchers and bank statements. Equally, on 5th August 2024, Sitarusha Mawe Tena, also based in Kisumu received a similar letter from the authority. This was done despite being compliant with the legal requirements. It is noted that this tactic of intimidation arose after the posters within different parts of the country, especially against human rights defenders.
5. Mr. Chairperson, there is an increasing concern about enforced disappearance against human rights defenders or critical voices within the community. On 19th August 2024, three human rights defenders Bob Njagi, Aslam Longton, and Jamil Longton were abducted in broad daylight, forcefully disappeared and held incommunicado for more than thirty days.[[1]](#footnote-1) Their disappearance prompted the filing of an application before the Constitutional and Human Rights Division of the High Court being case number HCCHRPET/E436/2024. The Court gave orders among them that the three be produced and the Acting Inspector General of Police appear before court to explain their whereabouts. The Acting IG of Police unfortunately defied the court orders, where the court found him being in contempt.[[2]](#footnote-2) Following this decision, the Judge’s security was withdrawn without justification.[[3]](#footnote-3) Human rights defenders are under the constant threat of being forcefully disappeared.
6. Mr. Chairperson, Kenya is yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance. In addition, enforced disappearance is yet to be criminalized in Kenya. As such, prosecution of this offence rarely occurs, and if it does, reliance is placed on existing criminal laws that are inadequate to sustain the charge. There is an urgent need for Kenya to ratify the Convention and criminalize enforced disappearance.
7. Mr. Chairperson, following the protests witnessed in the country, there has been an increase in the arbitrary arrests of human rights defenders. On 17 August, 2024, Muslims for Human Rights (MUHURI) board member Khelef Khalifa was arbitrarily arrested for insisting the police follow the recent court order banning the deployment of masked officers during routine police duties.[[4]](#footnote-4) There have been other cases of arbitrary arrests for human rights defenders, where they are held in detention for long periods without charge. During the protests, the Kenya National Commission on Human Rights reported there were over 61 cases of fatalities, over 600 cases of injuries, over 30 cases of enforced disappearances and 1600 cases of arbitrary arrests.[[5]](#footnote-5)
8. Mr. Chairperson, we are deeply concerned with the criminalisation of human rights defenders within the country. As witnessed, the activities by human rights defenders have been delegitimised and made to seem illegal despite standing for human rights and fundamental freedoms as provided for in the Constitution. Such criminalisation has resulted in arbitrary arrests, constant harassment, unfounded criminal sanctions, excessive delays in criminal procedures, stigmatisation and prolonged detentions. It is noted that the most utilised offence targeted against HRDs is creating disturbance in a manner likely to cause breach of peace as and unlawful assembly provided under sections 78, 79 and 95 of the Penal Code Cap 63. On 14th June 2024 Julius Kamau was arrested while peacefully protesting against the high cost of living and was charged with creating disturbance with intention to breach peace.[[6]](#footnote-6)
9. Mr. Chairperson, we are concerned with the increase of online and communication surveillance of human rights defenders to include online bloggers. This surveillance has been utilised by security agencies, in breach of clear data protection laws and regulations to interfere and intimidate the activities of human rights defenders. Where there exist such heightened levels of surveillance, human rights defenders, owing to the nature of their work, they become greatly hampered and especially in protection and safeguard of human rights and fundamental freedoms.[[7]](#footnote-7)
10. Mr. Chairperson, it is deeply concerning that the Kenya government in an effort to frustrate and interfere with the work of civil society organisations, requested for information on funding from one development partner. On 18th July 2024, the Principal Secretary in the Ministry of Foreign and Diaspora Affairs vide a letter on the same date, to Ford Foundation, listed 16 civil society organisations, indicating that they were beneficiaries of grants from the foundation and requested to be furnished with details of the expenditure, activities and beneficiaries of the funds. The government accused these organisations of contravening the laws of Kenya, including prohibition against incitement, hate speech, insurrection and mobilization using disinformation.[[8]](#footnote-8)
11. Mr. Chairperson, unfortunately, there have been widespread attacks and threats on press freedom. Surveillance on journalists and media professionals has increased with several journalists reporting surveillance or receiving threats after covering certain stories. We also note structural gaps within the state regulator, the Media Council of Kenya as it is not sufficiently constituted to adequately support the realization of press freedom in Kenya. Further, the Communication Authority (CA) has regularly given advisories aimed at negatively impacting press freedom. For instance, on 17 July 2024, the CA issued a caution to newsrooms, warning them against broadcasting content related to the anti-government protests[[9]](#footnote-9). On 28th June 2024, Kenya Television Network (KTN) was threatened with shutdown if it continued airing the protests. This action was seen as an attempt to restrict public access to critical information about the events unfolding in the country, thereby undermining the right to information and media freedom. A journalist who was covering the recent protests was shot three times by live bullet while on duty. The journalist has continued to receive threats from unknown persons for highlighting and pursuing justice for this violation.[[10]](#footnote-10)
12. Mr Chairperson, there is an increasing concern on the abuse of the Computer Misuse and Cybercrimes Act of 2018 and more specifically Section 22 provides for the offence of provides for false publication and where one is found liable upon conviction, they pay a fine of Kenya Shillings five million or imprisonment of up to two years or both. Section 23 on its part focuses on publication of false information. Upon conviction, the person is liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or to both. Human Rights Defenders who carry on online activism are usually targeted, arrested and charged under the aforementioned provisions of the law in a quest to harass, threaten or intimidate them, so as to bar them from their quest of championing for human rights and fundamental freedoms.
13. Mr. Chairperson, we are concerned with the delay of operationalization of key laws which directly impact on the work of human rights defenders. Despite the National Coroners Service Act being enacted in 2017,[[11]](#footnote-11) the same has yet been operationalized. This statue is critical especially with dealing with unexplained deaths to include extrajudicial killings which is of grave concern in the country. In addition, the Public Benefits Organisations Act of 2013 is equally yet to be fully operationalized.[[12]](#footnote-12) This law has a direct impact on human rights defenders and civil society organisations in the country. There is an urgent need to ensure that these laws are fully operational.

The National Coalition of Human Rights Defenders-Kenya (Defenders Coalition) calls upon the Chairperson of the African Commission to urge the Kenyan government:

1. To ensure the proper investigations are conducted and the abductors of human rights defenders Bob Njagi, Aslam Longton, and Jamil Longton are arrested and prosecuted;
2. To ensure the unconditional release of all persons arrested and disappeared during anti-government protests;
3. To operationalise the National Coroners Service Act to ensure efficient investigations of unclear death circumstances;
4. To refrain and restrain the use of government agencies and departments to defeat, intimidate or interfere with the activities and mandate of human rights defenders and journalists;
5. To ensure the full investigation of deaths that occurred during the protests and ensure the prosecution of those to be found culpable;
6. To ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
7. To criminalize enforced disappearances and extra-judicial killings;
8. To uphold the independence of the Judiciary and adhere to court decisions;
9. To respect and uphold human rights and fundamental freedoms as enshrined in the Constitution of Kenya and regional and international instruments.
10. Repeal the Computer Misuse and Cyber Crime Act of 2018 and the Community Groups Registration Act of 2022 to ensure alignment with regional and international human rights standards on freedom of expression and association respectively.
11. Recognise the important contributions of HRDs and refrain from criminalising their work.

**Thank you, Mr. Chairperson,**

**Banjul, The Gambia**

**2nd October 2024**

**National Coalition of Human Rights Defenders – Kenya (Defenders Coalition)**

**Observer Status Number – 500**

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2. ‘Acting IG Masengeli sentenced to 6 months in prison for contempt of court’ <https://www.the-star.co.ke/news/2024-09-13-acting-ig-masengeli-sentenced-to-6-months-in-prison-for-contempt-of-court/> [↑](#footnote-ref-2)
3. ‘CJ Koome demands reinstatement of Justice Mugambi's security immediately’ <https://www.the-star.co.ke/news/2024-09-16-cj-koome-demands-reinstatement-of-justice-mugambis-security-immediately/> [↑](#footnote-ref-3)
4. ‘Veteran rights defender Khelef released after 4-hour detention in Malindi’ <https://www.the-star.co.ke/counties/coast/2024-08-17-veteran-rights-defender-khelef-released-after-4-hour-detention-in-malindi/> [↑](#footnote-ref-4)
5. <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1200/Update-on-the-Status-of-Human-Rights-in-Kenya-during-the-Anti-Finance-Bill-Protests-Monday-1st-July-2024> [↑](#footnote-ref-5)
6. ‘Protester alleged to have disrupted CS Ndungu's photo session pleads not guilty’ <https://www.the-star.co.ke/news/2024-06-19-protester-alleged-to-have-disrupted-cs-ndungus-photo-session-pleads-not-guilty/> [↑](#footnote-ref-6)
7. ‘Perception Survey Report: The Impact of Communication Surveillance on Human Rights Defenders in Kenya’ <https://defenderscoalition.org/4912-2/> [↑](#footnote-ref-7)
8. ‘Govt formally writes to Ford Foundation over role in recent chaos’ <https://www.capitalfm.co.ke/news/2024/07/govt-formally-writes-to-ford-foundation-over-role-in-recent-chaos/> [↑](#footnote-ref-8)
9. ‘Communications Authority cautions media to be responsible in coverage of protests’ <https://www.citizen.digital/news/communications-authority-warns-kenyan-media-over-coverage-of-anti-govt-protests-n346101> Accessed 28th September 2024. [↑](#footnote-ref-9)
10. Journalist shot while covering protests in Nakuru faces new threats, fears for safety <https://www.citizen.digital/news/journalist-shot-while-covering-protests-in-nakuru-faces-new-threats-fears-for-safety-n348799> Accessed 1st October 2024. [↑](#footnote-ref-10)
11. ‘Ruto petitioned to create Coroner General Office for transparent death investigations’ <https://www.capitalfm.co.ke/news/2024/07/ruto-petitioned-to-create-coroner-general-office-for-transparent-death-investigations/> [↑](#footnote-ref-11)
12. [↑](#footnote-ref-12)