

A human rights manifesto for Kenya

What needs to be done

Amnesty International

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What is Amnesty International?

Amnesty International is a worldwide human rights movement that works for the release of prisoners of conscience, fair trials for political prisoners and an end to torture, "disappearances", political killings and executions wherever they occur. Amnesty International has around one million members and supporters in over 100 countries around the world. The organization is financed by its members and supporters and accepts no money from governments.

In Africa, Amnesty International has national sections in Algeria, Benin, Côte d'Ivoire, Ghana, Mauritius, Nigeria, Senegal, Sierra Leone, Tanzania and Tunisia and structures in Botswana, Burkina Faso, Cameroon, Egypt, Mali, South Africa, Togo, Uganda, Zambia and Zimbabwe. For further information about Amnesty International's concerns in Kenya, please contact Amnesty International's International Secretariat

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Amnesty International

International Secretariat

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introduction

This human rights manifesto is addressed to all political parties in Kenya. Elections do not only determine who governs a country. They also provide an opportunity for people to tell politicians what kind of society they want to live in.

Kenya's human rights record is stained by repression and lack of accountability. Restrictions on fundamental human rights and freedoms are permitted by laws which should be repealed because they breach fundamental standards agreed by the entire international community. Every Kenyan has the right to live in a society where basic rights are respected in law and in practice.

In theory, Kenya is a democratic state in which Kenyans enjoy fundamental freedoms, including freedom of expression and association. In practice, many critics of the government have been harassed and intimidated.

Political prisoners have been subjected to sustained torture and police routinely beat criminal suspects. Peaceful protesters have been violently attacked by police and unarmed criminal suspects have been shot dead when they posed no threat to life.

Governments are much less likely to violate human rights if ordinary citizens know what their rights are and what they can do if their rights are not respected. Organizations raising awareness of civic and human rights are among those whose work has been disrupted by the authorities.

The Kenyan Government has responded to pressure by promising to respect human rights, and by signing international human rights treaties. But it takes more than public pronouncements to end human rights violations. It takes a wholehearted commitment by those in power to protect human rights and to bring to justice anyone who violates them.

This manifesto sets out the reforms essential to improving respect for human rights in Kenya. All those who seek to govern Kenya should now commit themselves publicly to human rights.

legal reform

"All human beings are born free and equal in dignity and rights...Everyone is entitled to all the rights and freedoms set forth in this Declaration"

Universal Declaration of Human Rights

Kenya has ratified a number of legally binding international human rights treaties, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. Yet there are many Kenyan laws which contravene the provisions of these human rights treaties, and which the authorities have used to restrict fundamental freedoms.

The Bill of Rights in the Constitution includes most basic freedoms, but it also allows for these rights to be curtailed or ignored by the government in a wide range of circumstances.

Opposition parties, human rights groups, other non-governmental organizations and trade unions have all faced restrictions on their freedom of expression and association. Meetings have been stopped or dispersed, sometimes violently. Opposition politicians have been arbitrarily arrested, interrogated and ill-treated.

Other rights have been restricted by laws which violate Kenya's treaty obligations, such as the right to freedom of movement.

Under the Constitution, the President has enormous powers of political patronage, and can suspend basic freedoms at will by declaring a state of emergency.

To bring Kenya's laws into line with internationally agreed human rights standards requires wide-ranging legal reform. A number of repressive laws should be repealed or amended and the Constitution should be strengthened to guarantee the fundamental rights of Kenya's citizens at all times.

What needs to be done:

The following laws should be repealed or amended because they breach fundamental standards agreed by the entire international community:

- The Preservation of Public Security Act, which allows indefinite detention without trial and restrictions on freedom of movement
- The Public Order Act, which is used to restrict freedom of association by requiring public meetings to be licensed in advance
- The Defamation Act and sections of the penal code dealing with sedition, which are used to arbitrarily restrict the right to freedom of expression
- The Societies Act, which restricts freedom of association and inhibits organizations, including trade unions and political parties, from gaining registration.

- The Chiefs' Authority Act, which gives local administration chiefs wide powers to restrict freedom of movement and other basic rights
- The Administration Police Act, which gives chiefs and sub-chiefs direct control over a section of the police force

The Constitution should be strengthened:

- to prohibit arbitrary detention
- to prohibit cruel, inhuman and degrading punishments, such as floggings and executions
- to ensure freedom of expression, movement, assembly and association, and freedom from discrimination
- to remove the power of the President to declare a state of emergency simply by issuing a Gazette Notice. State of emergency legislation should comply with Kenya's obligations under international standards. Emergency measures should never be introduced or maintained as a means of suppressing the legitimate exercise of rights. Provisions of emergency legislation that weaken safeguards against abuse of authority should be repealed.
- to ensure that constitutional rights cannot be abridged, abrogated or abolished by the executive authorities

press and judicial freedom

"Everyone has the right to freedom of opinion and expression; this right includes freedom to...impart information and ideas through any media"

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal"

Universal Declaration of Human Rights

Journalists trying to report on events have been assaulted by police and by members of the KANU youth wing. They have been arrested and have had their cameras and film destroyed. Opposition newspapers have been impounded and printing presses have been put out of action.

The judiciary has been subject to undue government interference. Magistrates have also been refused permission to attend a number of international legal meetings.

What needs to be done:

- freedom of the press should be guaranteed and journalists protected from interference, arbitrary arrest and ill-treatment by the security forces
- the Registrar of Societies should not have unfettered discretion to ban and de-register media and publishing houses
- the rights to freedom of information and expression should be enshrined in law, and laws which restrict these freedoms in ways which fall short of international standards should be repealed
- the judiciary should be protected against undue interference by the executive, and should receive the political support and necessary resources to carry out its duties
- international standards relating to the judiciary, prosecutors and lawyers, including those contained in the UN Basic Principles on the Independence of Judiciary, the Guidelines on the Role of Prosecutors and the Guidelines on the Role of Lawyers, should be incorporated into Kenyan law and legal practice

arbitrary arrests

"No one shall be subjected to

arbitrary arrest, detention or exile"
 Universal Declaration of Human Rights

Human rights defenders have been threatened, harassed, beaten and arbitrarily arrested for their non-violent activities. Their meetings have been disrupted and their premises raided. Thousands of other people have been arrested just for being in the wrong place at the wrong time. Police have rounded up the poor, women, street children and refugees in mass arrests. Accused of being drunk and disorderly, of prostitution, or of being illegal aliens, they are held in police cells, where few have access to a lawyer, either because of poverty or because they do not know their rights. Many are sentenced to Kenya's overcrowded prisons, where conditions are life-threatening.

What needs to be done:

- no one should be arbitrarily arrested. Arbitrary arrests are prohibited by Article 9(1) of the International Covenant on Civil and Political Rights, and Article 6 of the African Charter on Human and Peoples' Rights. Kenya has ratified both these binding treaties
- all arrests should be carried out under strict judicial control, and only by authorized law enforcement personnel
- everyone should be informed, at the time of arrest, of the specific reasons for his or her arrest. All detainees should receive a clear oral and written explanation of their rights and how to exercise them, including how to complain about ill-treatment
- no one should be held by the police for longer than the legal limit of 24 hours without being brought before a court
- no one should be arrested solely on the basis of their nationality or ethnic origin. No refugee should be sent back to their country of origin if they are likely to be at risk of human rights violations there

torture and ill-treatment

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"
 Universal Declaration of Human Rights

Anyone arrested in Kenya is at risk of torture or ill-treatment, despite Kenya's recent ratification of the UN Convention against Torture. Police have routinely beaten criminal suspects, especially those who are poor and not in a position to pay bribes or pursue complaints. Political prisoners have been subjected to sustained torture – some have been permanently disabled. Courts have sentenced prisoners to be flogged - a cruel, inhuman and degrading punishment.

What needs to be done:

- no one should be held incommunicado
- no one should be interrogated without a lawyer present
- the authorities in control of detention and interrogation should be separate
- confessions extracted under torture should never be allowed as evidence in court
- judges and magistrates should examine rigorously the legality of detentions and should investigate all allegations of torture
- adequate medical safeguards for prisoners should be introduced: an independent medical examiner's office should be established; medical examinations should be provided regularly by independent professionals
- all allegations of torture and ill-treatment should be independently and impartially investigated and those responsible should be brought to justice

- torture and ill-treatment should be absolutely prohibited
 - cruel, inhuman and degrading punishments such as floggings should be abolished
 - the provisions of the UN Convention against Torture should be incorporated into Kenyan law
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police killings

"Everyone has the right to life,
liberty and security of person"

Universal Declaration of Human Rights

A disturbing number of Kenyans have been killed in recent years by the very people who are supposed to protect them – the police. Some have died in custody as a result of torture. Others have been shot dead by police even though they posed no threat. Some political opponents of the government have died in suspicious circumstances. The number of killings by police indicates either that the police have been operating a "shoot to kill" policy against criminal suspects, or that they are out of control.

What needs to be done:

- police officers should use force or fire-arms only when strictly necessary, and to the minimum extent required in the circumstances
 - police officers should minimize injury and respect and preserve human life in their use of necessary force. Lethal force should only be used when strictly unavoidable to protect the lives of others
 - when injury or death is caused by the use of force and firearms by police officers, they should report the incident to their superiors, who should ensure that independent and impartial investigations of all such incidents are carried out
 - international standards, including the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, should be incorporated into Kenyan law and practice
 - force or firearms should not be used to disperse non-violent assemblies.
 - all allegations of unlawful killings by police officers should be investigated and those responsible brought to justice
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death penalty

"Everyone has the right to life"

Universal Declaration of Human Rights

More than 700 people are under sentence of death in Kenya. Many were condemned to death after unfair trials. Some were convicted on the basis of statements extracted under torture.

Many had no lawyer to help defend them. The death sentence is mandatory for treason, murder, robbery with violence or attempted robbery with violence. Only defendants charged with murder and treason who are tried by the High Court qualify for state legal aid to help them pay for a lawyer. The majority are tried in magistrate's courts where legal aid is not available.

No executions have been reported for nine years, but many prisoners on death row have died as a result of appalling prison conditions.

What needs to be done:

- the death penalty should be abolished
 - all existing death sentences should be commuted
 - until the death penalty is abolished, no executions should be carried out
 - until the death penalty is abolished, no offence should carry a mandatory death sentence
 - until the death penalty is abolished, no one should be tried for an offence carrying the death penalty without having legal representation
 - until the death penalty is abolished, no one should be tried for an offence carrying the death penalty in a magistrate's court
 - until the death penalty is abolished, no one should have a prison sentence increased to a death sentence by an appeal court
 - conditions in prisons should be improved to conform with minimum standards of humane treatment, as set out in the UN Standard Minimum Rules for the Treatment of Prisoners
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Supporting Organizations

This is a provisional list of organizations which have endorsed this human rights manifesto for Kenya:

Centre for Governance and Development,
PO Box 18379,
Nairobi,
Kenya

Centre for Law and Research International CLARION,
PO Box 38863,
Nairobi,
Kenya

Citizens Coalition for Constitutional Change, PO Box 65646,
Nairobi,
Kenya

Coalition on Violence Against Women,
PO Box 7631,
Nairobi,
Kenya

Education Centre for Women in Democracy, (ECWD),
PO Box 62714,
Nairobi,
Kenya

Institute for Education in Democracy (IED), PO Box 43874,
Nairobi,
Kenya

International Federation of Women Lawyers, (FIDA), Kenyan Section,
PO Box 46324,

Nairobi,
Kenya

International Commission of Jurists, Kenyan Section
PO Box 59743,
Nairobi,
Kenya

Kenya Human Rights Commission (KHRC), PO Box 55235,
Nairobi,
Kenya

Kituo cha Sheria,
PO Box 7483
Nairobi,
Kenya

League of Woman Voters,
PO Box 8332,
Nairobi,
Kenya

Legal Resources Foundation
PO Box 61671,
Nairobi,
Kenya

Mazingira Institute,
PO Box 14550,
Nairobi,

The Media Institute,
PO Box 62651,
Nairobi,
Kenya

Nairobi Law Monthly,
PO Box 53234,
Nairobi,
Kenya

Public Law Institute,
PO Box 52011,
Nairobi,
Kenya

Release Political Prisoners,
PO Box 50613,
Nairobi,

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