

April 30, 2015

The Honorable John F. Kerry
U.S. Department of State
Washington, DC 20520

Dear Secretary Kerry,

We, the undersigned organizations and individuals, write to you regarding your planned visit to Kenya later this month. This trip offers important opportunities to address both new and longstanding problems in Kenya's human rights record, in particular impunity for serious abuses by security forces including extrajudicial executions, proposed legislation that would worsen the increasingly difficult environment for the media and civil society, and increasing pressure on Kenya's Somali refugee population. We urge you to include these important issues in your trip agenda and have outlined below details and key recommendations we would like you to raise during your meetings with Kenyan government officials at all levels, including President Uhuru Kenyatta.

The United States has historically played an important role on human rights in Kenya, including by quickly and strongly condemning post-electoral violence in 2008. This forthright position helped to push the parties to the negotiating table and end the violence that was threatening to explode into civil war. Just before the 2013 elections, which ushered in the new administration of President Uhuru Kenyatta, Kenya appeared to be making progress with regard to the protection and promotion of human rights. More recently, however, we are concerned that President Kenyatta and his administration are chipping away at these gains under the guise of promoting national security and combatting terrorism, including by imposing unjustified curbs on civil society and independent media. As one of Kenya's closest allies and a key partner in the fight against terrorism, the US has a unique voice to urge Kenya to change that trajectory.

Specifically this would include addressing:

1. Accountability for abuses by the security forces. The Kenyan police and other security forces have long enjoyed impunity for serious human rights violations. This lack of accountability was identified by the Commission of Inquiry on Post-Election Violence as a crucial area for reform in the wake of the 2007-2008 violence, and it remains a central challenge. More recently, credible [research](#) has implicated Kenyan security forces, including, but not limited to, the Anti-Terrorism Police Unit, in serious abuses, including extrajudicial killings and the enforced disappearance of terrorism suspects in Nairobi, on the coast and the northeastern region. Security forces have routinely responded to suspected Al-Shabaab attacks with abusive operations and by actions that appear to target entire communities – Muslims, ethnic Somali Kenyans and Somali refugees – based on their ethnicity, nationality or religion.

For example, in April 2014, authorities conducted [Operation Usalama Watch](#) in Nairobi following a series of grenade and gun attacks in Nairobi's Eastleigh neighborhood, which is occupied predominantly by ethnic Somali Kenyans and refugees, and in Mombasa. Kenyan police and military deployed an estimated 6,000 security officers to Eastleigh over several weeks. The forces raided homes, buildings, and shops, harassed and detained an estimated 4,000 people and frequently extorted large sums of money in exchange for their release. Although the Independent Policing Oversight Authority (IPOA), a civilian oversight mechanism (significantly funded by the United States), released the findings of its investigation that found at least 29 cases of serious security force abuse and recommended that those responsible be held to account, we are not aware of anyone implicated in the abuses having been prosecuted. More recently, there are credible allegations that the security forces committed ongoing abuses against residents of Garissa, Mandera, and Wajir before and after the heinous April 2 attack in Garissa. These serious

allegations require urgent investigation, alongside credible efforts to bring those who planned and executed the Garissa attacks to justice.

We hope you will use your visit to Kenya to ensure the authorities understand the importance of genuine security sector reform and commit to taking the necessary steps to reverse the current trends. In particular, this includes the need to investigate reports of security force abuse and hold those found responsible to account, whether for recent operations or those that date back further. Meaningful efforts to address impunity also entail cooperating with the International Criminal Court (ICC) on cases related to the 2007-2008 post-election violence. It also means making clear that the indiscriminate targeting of Muslim and ethnic Somali communities is neither an effective nor a lawful response to attacks by armed groups in Kenya. Such abusive actions risk undermining confidence in the security forces and fueling radicalization instead of mitigating it.

2. Restrictive legislation and obstructions of the media and civil society. Kenyan civil society and the media operate in an increasingly difficult environment. Hostile official rhetoric, buttressed by efforts to enact restrictive new laws, could have a sharp impact on the availability of independent news and analysis and could undermine freedom of expression and association. In the past year we have also seen an increasing number of physical attacks against journalists and human rights defenders by state agents.

Of immediate concern are ongoing attempts to amend an NGO law, the Public Benefits Act of 2013, which could profoundly restrict civil society space and obstruct operations, for example, by capping the amount of funding that an organization can receive from external sources to 15 percent.

Kenya should also repeal existing laws that restrict media freedom and freedom of expression, such as certain clauses in the Media Council Act 2013; the Kenya Information and Communications Act 2013; and the Security Laws Amendment Bill.

Finally, as you may be aware, the Kenyan authorities recently listed two prominent human rights groups – Haki Africa and Muslims for Human Rights (MUHURI) – known for their work exposing abuses by the security forces against communities on the coast, on its list of entities alleged to support Al-Shabaab. The Kenyan Revenue Authority (KRA) raided their offices on April 20 and 21, respectively, and seized documents and hard drives in connection with investigations into possible tax evasion. In the absence of clear evidence, Kenyan authorities should remove them from the list of organizations linked to terrorism, unfreeze their bank accounts, and end its pressure on both organizations.

We urge you to use this trip to make explicitly clear, both in public and in private, that the protection of civil society organizations – in line with the September 2014 Presidential Memorandum on Civil Society – is a top priority for the United States and that any new legislation should respect international standards on freedom of expression and association. We also urge you to make clear to the Kenyan authorities that any individual or group listed as affiliated with terrorism or sympathetic to Al-Shabaab needs to have adequate notification, and the opportunity to contest the listing before an impartial court.

3. Discrimination and abuse against refugees in Kenya. Kenya has provided refuge to hundreds of thousands of Somali refugees for several decades, a noteworthy gesture. However, refugee communities are routine targets for harassment and mistreatment by Kenyan police, and security forces have also committed serious human rights violations, including beatings, torture and sexual violence against members of many refugee communities around the country. Moreover, hostile rhetoric and allegations against refugees has increased in the wake of Kenya's security crisis, despite the government's

failure to produce evidence that refugees have provided material support to armed militants.

While some eight clauses of the recently passed Security Laws Amendment Act were struck down by the court, a provision that remains, which requires refugees living in the community to relocate to the camps, is deeply troubling. The Deputy President's statement about closing the Dadaab refugee camps becomes all the more ominous given that all refugees are supposed to report to those same camps. The statement also underscores concerns that Kenya's government may try to forcibly return refugees to Somalia, despite the ongoing conflict and lack of security and services in south-central Somalia. UNHCR has expressed concerns that the plan would have "extreme humanitarian and practical consequences, and would be a breach of Kenya's international obligations."

The Kenyan Foreign Minister's recent call on international donors to fund repatriation is an important opportunity for all donors, including the US, to clearly state that any repatriation of refugees must be voluntary, in line with international standards, and that Kenyan authorities should promptly address the serious violations committed by security forces against refugees. The US should also reiterate the principle that lawfully present refugees should have freedom of movement barring an individualized determination that a particular refugee represents a threat to national security or a danger to the community. We hope you will urge Kenyan authorities to respect international refugee law and cease any plan of forced mass returns.

This is a critical time for Kenya's bilateral partners to unequivocally call for a fundamental change in how Kenya manages the ongoing threat of attacks. Kenya's leaders need to ensure that security operations meet basic international human rights standards, and avoid discrimination and abuse against Kenya's diverse Muslim community. Equally important, Kenya's civil society and media should have space to operate, including to raise issues of critical concern such as governance, corruption and abuses. Your visit to Kenya, just two months before the much-anticipated visit by President Barack Obama, is an important opportunity to clearly articulate these messages.

Sincerely,

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William M. Bellamy
Former US Ambassador to Kenya
*Co-chair, Kenya Working Group

Bronwyn Bruton
Deputy Director, Africa Center
The Atlantic Council

Freedom House
*Member, Kenya Working Group

Haki Africa

John Harbeson
City University of New York
*Member, Kenya Working Group

Sarah Margon
Human Rights Watch

*Co-chair, Kenya Working Group

Muslims for Human Rights (Muhuri)

Sarah Pray

Open Society Policy Center

*Co-chair, Kenya Working Group

David W. Throup

Johns Hopkins SAIS and George Washington University

*Member, Kenya Working Group