

President Barack Obama
The White House

July 14, 2015

Dear President Obama,

As you prepare to attend the 2015 Global Entrepreneurship Summit in Kenya, we, a group of Kenyan and international organizations, write to urge you to include critical human rights issues in all your discussions with Kenyan officials, including President Uhuru Kenyatta.

In 2010, Kenya passed one of Africa's most progressive constitutions, demonstrating Kenyans' commitment to democracy characterized by rule of law and respect for human rights. This commitment should guide how Kenya addresses its greatest challenges – insecurity, corruption, and poverty.

We are concerned that recent government efforts indicate that President Kenyatta and his administration are undermining the new constitution and commitments to international human rights law, under the pretext of promoting national security and combatting terrorism. The abusive approach, including unlawful restrictions on civil society and independent media, leads to both ineffectiveness and disenfranchisement thereby undermining the goals of Kenya's counterterrorism efforts. This trend should be of particular concern for the United States due to Kenya's prominent role in East Africa.

As part of the ongoing strategic cooperation between the United States and Kenya, we urge you to make the following recommendations, and clearly illustrate that the US is committed to accountability and freedom of expression as fundamental elements essential to improving human rights for all Kenyans.

Threats to Civil Society and Media

Kenya's civil society groups were integral to securing the constitution and remain a critical voice in defending the rights of all Kenyans. But human rights defenders (HRDs) and members of the media working on a range of issues, including security force abuses, the rights of lesbian, gay, bisexual and transgender people, and corruption face increasing obstacles and harassment. As you know, MUHURI and HAKI Africa, the two human rights organizations working to document abuses in counter-terrorism operations at the coast, have faced an onslaught of administrative harassment, including arbitrary searches and seizure of documents, freezing of bank accounts and suspension of insurance coverage. We appreciate your administration's multiple efforts to support these two organizations and encourage the Kenyan government to collaborate with, rather than attack, them. However, both organizations' bank accounts remain frozen despite an interim court order forbidding the government from associating them with terrorist groups.

Simultaneously, the Kenyan government is attempting to amend the Public Benefits Organizations (PBO) Act, which was enacted in 2013 following extensive consultations between government and civil society, to introduce restrictive clauses. The original act has not yet been implemented, but efforts to amend the law would undermine the Act's original purpose of creating an enabling environment for civil society while enhancing transparency and accountability and strengthening collaboration between the government and civic groups. Accordingly, we recommend you:

- Urge the Government of Kenya to implement the current PBO Act as is, seek consensus with key stakeholders before relevant amendments are considered and not to introduce or consider further restrictive legislation.
- Urge Kenyan authorities to end official and non-official threats, harassment and intimidation aimed at silencing HRDs, human rights non-governmental organizations (NGOs) and the media.
- Robustly implement your initiatives aimed at supporting HRDs, journalists and NGOs, especially those urging accountability for abuses by security forces.

- Continue to emphasize to Kenyan authorities that civil society is a partner rather than an obstacle in counterterrorism efforts and stress the role civil society can play in addressing the underlying challenges and gaps that drive extremism, giving a voice to marginalized groups.
- Call on the Government of Kenya to ensure that regulatory bodies such as the NGOs Coordination Board adhere to due process in all matters involving freedoms of expression, assembly and association in accordance with the Constitution of Kenya.

National Security, Human Rights, and Abuse

Kenya clearly faces serious security challenges. However, the authorities' responses have often been unlawful, ineffective, and marred by serious abuses. A number of credible, independent groups have found the Kenyan security forces, including, but not limited to, the Anti-Terrorism Police Unit, to be [implicated](#) in extrajudicial killings and enforced disappearances of terrorism suspects in Nairobi, on the coast and in the northeastern region. Security forces have routinely responded to suspected Al-Shabab attacks with [abusive law enforcement operations](#) and by actions that appear to target entire communities – Muslims, ethnic Somali Kenyans and Somali refugees – based on their ethnicity, nationality or religion. There is nearly complete impunity for this type of unlawful and undisciplined approach.

At the same time, the Security Laws (Amendment) Act of 2014 expanded police powers to stop, search and detain suspects, introduced criminal penalties for journalists publishing or broadcasting images of terror attacks and extended detention without trial for terror suspects. Although the High Court nullified eight sections of the law on the grounds that those sections were unconstitutional, the Security Laws Amendment Act still contains many problematic clauses.

Accordingly, we recommend you use your upcoming visit to encourage the Government of Kenya to respect the Constitution in its efforts to address national security and ensure no legislation violates Kenya's commitments under international human rights law. Specifically, this includes recommendations to:

- Urge the government and police leadership to order investigations into reports of security force abuses in Nairobi, on the coast and in the northeast, and hold those found responsible to account.
- Underscore that indiscriminate targeting of Muslim and ethnic Somali communities is neither an effective nor a lawful response to attacks by armed groups in Kenya, and risks undermining confidence in the security forces, fueling radicalization instead of mitigating it.

Discrimination and abuse against refugees

Kenya has provided refuge to hundreds of thousands of Somali refugees for several decades, an important contribution in the region. But harassment and allegations against refugees have 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.

In his May 2015 visit, Secretary Kerry announced over \$45 million in new funding to the UN High Commissioner for Refugees to protect and assist some 600,000 refugees in Kenya. This support could make a substantial contribution to improving the lives of Kenya's refugees who have been [routine targets](#) for harassment, beatings, torture and sexual violence by security forces. But the public rhetoric against refugees by Kenyan leaders calling for their forced return and subsequent harassment by security agencies has continued. We therefore recommend that you should:

- Urge the Kenyan government to register and protect Kenya's refugee communities, including those from Somalia and push for investigations to reports of police abuse of refugees.
- Remind Kenyan officials of the clear requirement in international refugee law that returns must be voluntary; Forcing refugees to return to a country where they face persecution, torture, or situations of generalized violence – like Somalia – would violate African and international law.

Corruption and Accountability

Kenya continues to be plagued by corruption at all levels of government with limited accountability. Left unchecked, this corruption impacts the ability of the Kenyan Government to protect national security and provide basic services to Kenyans. Although President Kenyatta initially appeared to take a bold and encouraging stand when he presented the list of those suspected of corruption in parliament last March, the process seems to have been politicized and selective. Officials of the anti-corruption agency have also been forced out of office under very unclear circumstances, thus undermining the legitimacy and credibility of current anti-corruption efforts. We recommend that you should:

- Expand support to NGOs and other institutions working on governance, democracy and transparency, including investigation and prosecution of corruption cases, in Kenya.
- Stress to attendees of the Global Entrepreneurship Summit that the Government of Kenya should tackle corruption and hold corrupt officials at all levels and without favor to account in order to encourage entrepreneurship and effectively attract foreign investment.
- Encourage the Government of Kenya to safeguard the independence of institutions such as the Office of Director of Public Prosecutions in order to enhance accountability.

As one of Kenya's closest allies and a key partner in the fight against terrorism, the US has a unique role in urging President Kenyatta and his government to change its current trajectory and work to implement the 2010 Constitution. We urge you to raise these critical issues during your upcoming historic visit to Kenya.

Sincerely,

Africa Centre for Open Governance (AfriCOG)
Akiba Uhaki Foundation
ARTICLE 19
CSO Reference Group
Coalition for Constitution Implementation (CCI)
Constitution and Reform Education Consortium (CRECO)
Freedom House
HAKI Africa
Human Rights Watch
Inuka Kenya Ni Sisi Ltd
Kenya Human Rights Commission (KHRC)
Kenya Section of International Commission of Jurists (ICJ)
Kenyans for Peace with Truth and Justice (KPTJ)
Muslims for Human Rights (Muhuri)
National Coalition of Human Rights Defenders – Kenya (NCHRD-K)
Pawa Initiative
Protection International