

# Katiba at Ten: Distressed yet Defiant A Citizens' Scorecard on the First Decade



## DEDICATION AND ACKNOWLEDGEMENT

Two decades of civic and political struggle preceded the passing of the Constitution of Kenya on 27 August 2010. This scorecard is dedicated to all that suffered under decades of the one-party state, imperial presidency, state discrimination and violence.

Popularly known as the *Wanjiku's* Katiba, we would have had this constitution if ethnic clashes and post-election violence hadn't happened and the infamous Nyayo House dungeons hadn't existed. We live within the grace and courage of millions who prayed, stood up, knelt, chanted, demonstrated, voted and organized for this constitution.

Under Article 3.1 of the Constitution, we all carry a civic responsibility to challenge impunity, expose human rights violations and use our freedom to enable others to do the same. The price of this freedom is eternal vigilance and action to protect these freedoms and rights. We dedicate this scorecard to those that continue to protect and expand justice for all.

@Amnesty International Kenya

**This opinion poll was jointly commissioned by the Kenyan National Commission on Human Rights, Kenya Legal and Ethical Issues Network, Katiba Institute, International Commission of Jurists – Kenya Section, HakiJamii, Haki Africa, Federation of International Women Lawyers, Centre for Rights Education and Awareness and Amnesty International. We thank the United Nations Human Rights Office of the High Commissioner in Kenya for their support.**

We acknowledge leading opinion polling agency Infotrak and Research Consulting for independently polling Kenyans on their views. We thank those interviewed for their insights and our staff for interpreting, writing and editing this report. We retain responsibility for the conclusions reached and invite readers to draw their own conclusions. Engage us and the rest of the country on our insights and call to action. This report is the first of three reports on what Kenyans think about the implementation of the 2010 constitution, human rights and COVID-19 and the upcoming 2022 General Elections.

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## INTRODUCTION

2020 marks the tenth anniversary of the promulgation of the 2010 Constitution and the birth of the Second Republic. The Kenya National Commission on Human Rights and eight human rights organisations commissioned this scorecard to understand the level of awareness, perceptions, attitudes and experiences of Kenyans on the implementation of the 2010 constitution.

The promulgation of the 2010 constitution brought in its wake an aura of optimism among most Kenyans. We expected and demanded a new order, a radical departure from the excesses, exclusions and subjugation of the independence constitution. Given a huge vote of approval at the referendum, the 2010 constitution was expected to guarantee human rights to all, freedom from discrimination and change the governance system for the good.

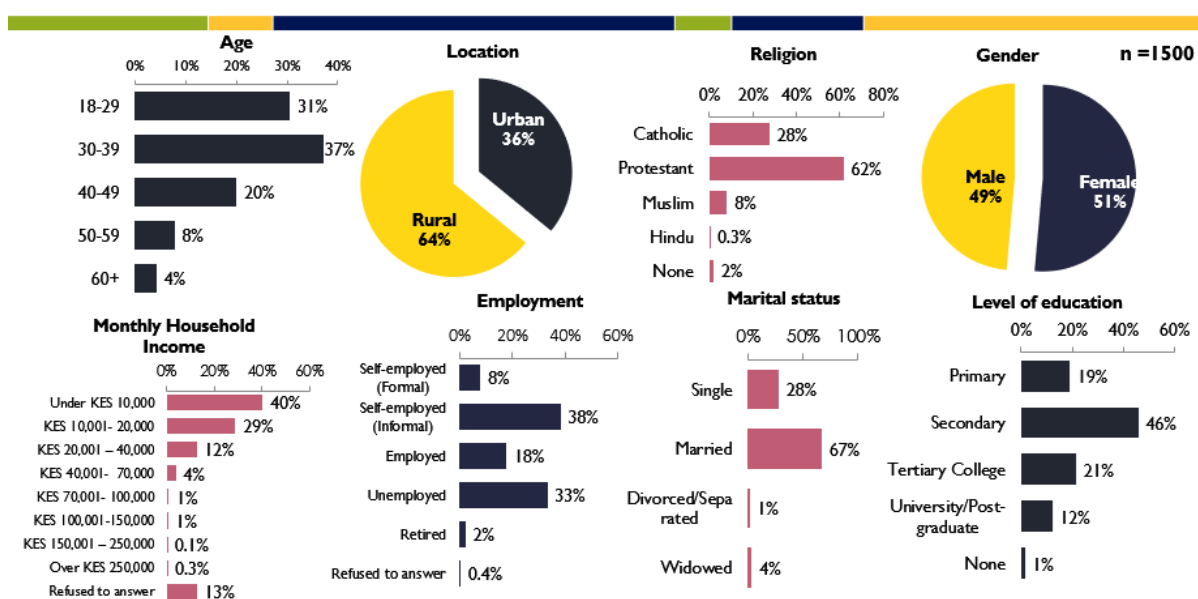
The report reveals key insights on chapters 1 (people drive state), 4 (Bill of Rights), 6 (Leadership Integrity) and 11 (Devolved governance). The findings inform implementation gaps and key obstacles blocking the protection and promotion of human rights for all. They also answer the question of this moment, is it time to amend or enforce the constitution?

## METHODOLOGY

Public perception surveys are an important policy feedback mechanism. Perceptions mirror reality and carry with them the expectations of citizens. Gathering the pulse on the ground on the implementation of the constitution and the Bill of Right is critical for state, non-state agencies and citizens to secure human rights of all.

1,500 diverse respondents across 24 counties were interviewed by Infotrak and Research Consulting through Computer Assisted Telephone Interviews (CATI) research methodology. A series of qualitative expert informant interviews were also conducted between 16 and 21 August. The margin of error is  $\pm 2.53\%$  at 95% degree of confidence. The response rate of the survey was 97%.

51% of the respondents were female and 37% were aged between 30-39, 31% between 18-29, 20% between 40-49 and 4% over 60. Majority of the respondents (64%) were based in the rural areas while 36% were based in the urban areas.



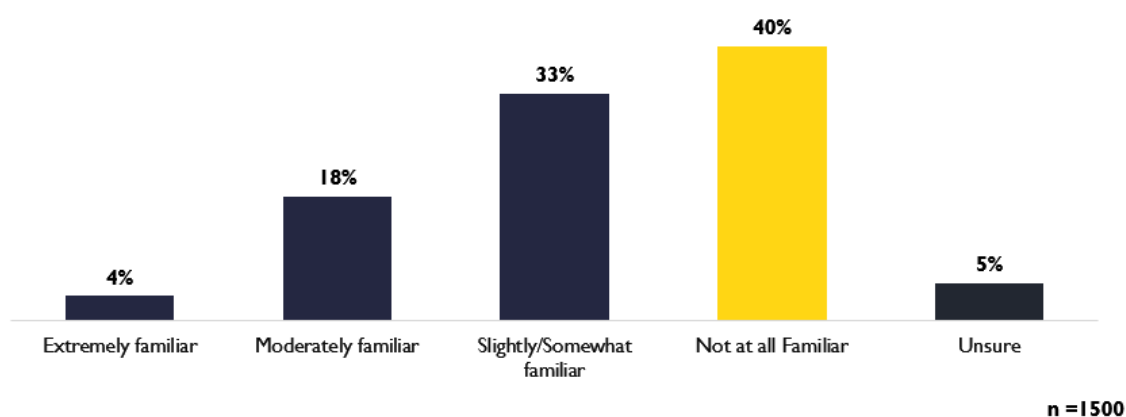
## NINE INSIGHTS ON THE STATE OF THE CONSTITUTION AT TEN: A SCORECARD

This opinion poll reveals nine insights on the state of constitutional implementation and what needs to happen next. They include the following key findings;

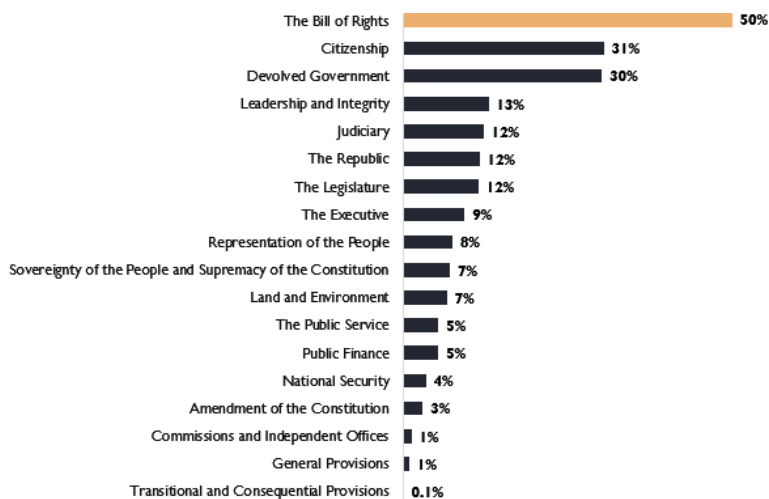
- Fifty-five per cent of Kenyans are now familiar with the Constitution of Kenya
- Only 23% of Kenyans are satisfied with the progress of implementation. 45% feel that the implementation has been slow or disappointing.
- 75% of Kenyans associate devolution with improved development services, but 87% note that devolution has also accelerated corruption and the misuse of public funds especially in Rift Valley, Nairobi, Western and North Eastern.
- Twice as many Kenyans fear police brutality (49%) than poverty (21%)
- 36% will take no action when faced with human rights abuses. 33% will report to the police while 27% will publicly demonstrate against violators.
- 60% want stricter enforcement of the Bill of Rights.
- 39% say the Kenya National Commission on Human Rights (KNCHR) is the most active and visible organisation in the fight for human rights followed by civil society and human rights organisations (19%) and the EACC (7%).
- 60% of Kenyans want the constitution enforced rather than amended. This support is strongest among Kenyans aged under 49 and those living in urban areas.

### 1. PUBLIC AWARENESS OF THE CONSTITUTION

Fifty-five per cent of Kenyans are familiar with the Constitution of Kenya. 50% of those who are aware of the Constitution are most familiar with the Bill of Rights. Familiarity with the Bill of Rights is highest in Central (61%) and Western (53%). The highest levels of familiarity with the Bill of Rights are among women (52%) and Kenyans between 30 - 39 years (54%).



How familiar are you with matters related to the Constitution of Kenya 2010? Are you...?



n =820, Respondents familiar with the constitution

Which chapters/sections, if any, of the Constitution of Kenya are you familiar with?

## 2. DEGREE OF OUR SATISFACTION WITH THE PROGRESS OF IMPLEMENTATION

Only 23% of Kenyans are currently satisfied with the progress of implementation. 34% are dissatisfied and 43% staggeringly, are disinterested or have no view either way. Satisfaction is highest in North Eastern (42%) while dissatisfaction is highest in Western (46%). Urban dwellers expressed greater satisfaction (38%) compared to those in rural areas (32%). Only 23% of Kenyans are satisfied with the progress of implementation. 45% feel that the implementation has been slow or disappointing.

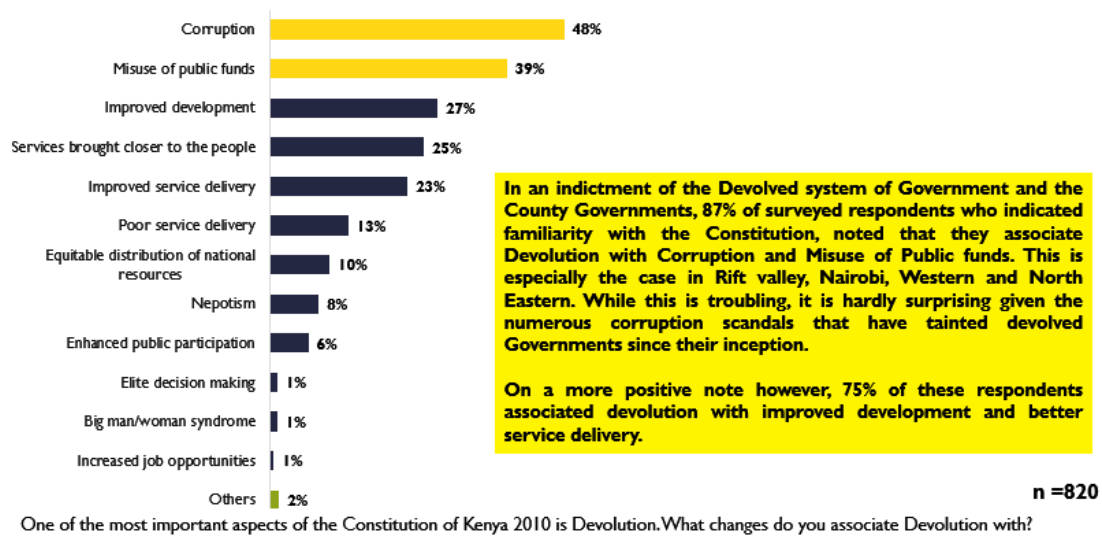
	Very dissatisfied	Dissatisfied	Very dissatisfied/Dissatisfied	Neither satisfied nor dissatisfied	Satisfied	Very satisfied	Satisfied/Very satisfied
NORTH EASTERN	-	28%	28%	30%	37%	5%	42%
COAST	8%	31%	39%	33%	27%	2%	28%
NYANZA	6%	31%	37%	38%	24%	1%	24%
WESTERN	5%	41%	46%	32%	21%	1%	23%
CENTRAL	10%	27%	36%	41%	21%	1%	22%
RIFT VALLEY	2%	27%	29%	50%	19%	1%	21%
EASTERN	5%	24%	29%	52%	19%	-	19%
NAIROBI	1%	38%	39%	43%	17%	1%	18%
<b>Total</b>	<b>4%</b>	<b>30%</b>	<b>34%</b>	<b>43%</b>	<b>22%</b>	<b>1%</b>	<b>23%</b>

Ten year's down the line after the promulgation/passage of the Constitution of Kenya 2010, to what extent are you satisfied or dissatisfied with the implementation of the new Constitution? Are you...? n =820

## 3. IMPACT THE CONSTITUTION HAS ON OUR LIVES

75% associated devolution with improved development and better service delivery. 34% of Kenyans raised concerns with the increased taxes and associated with the cost of devolved institutions and multiple layers of political representation. This is particularly so in the case of North Eastern and Eastern among those between 40-49 years old.

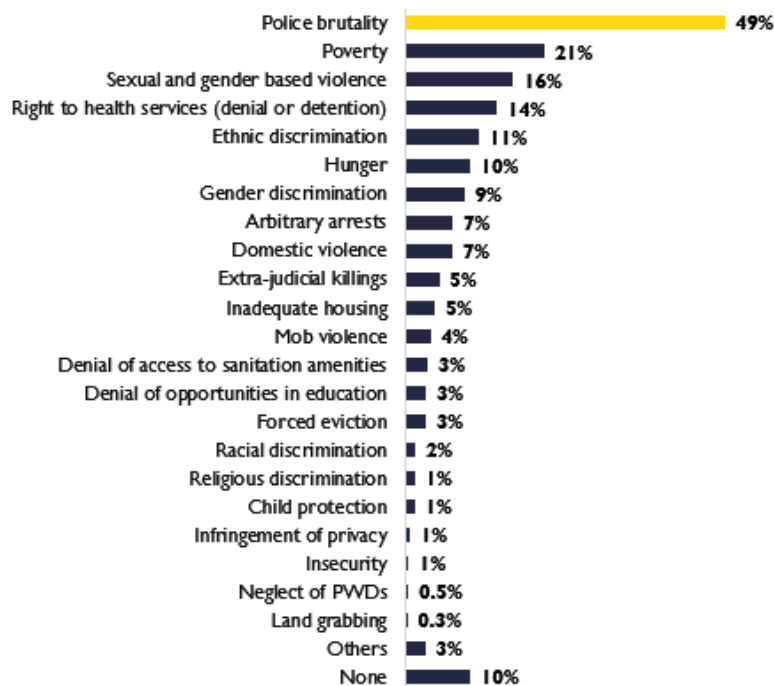
87% of Kenyans who indicated their familiarity with the constitution noted that devolution has also accelerated corruption and misuse of public funds especially in Rift Valley, Nairobi, Western and North Eastern.



One of the most important aspects of the Constitution of Kenya 2010 is Devolution. What changes do you associate Devolution with?

#### 4. MOST COMMON VIOLATIONS IN 2020

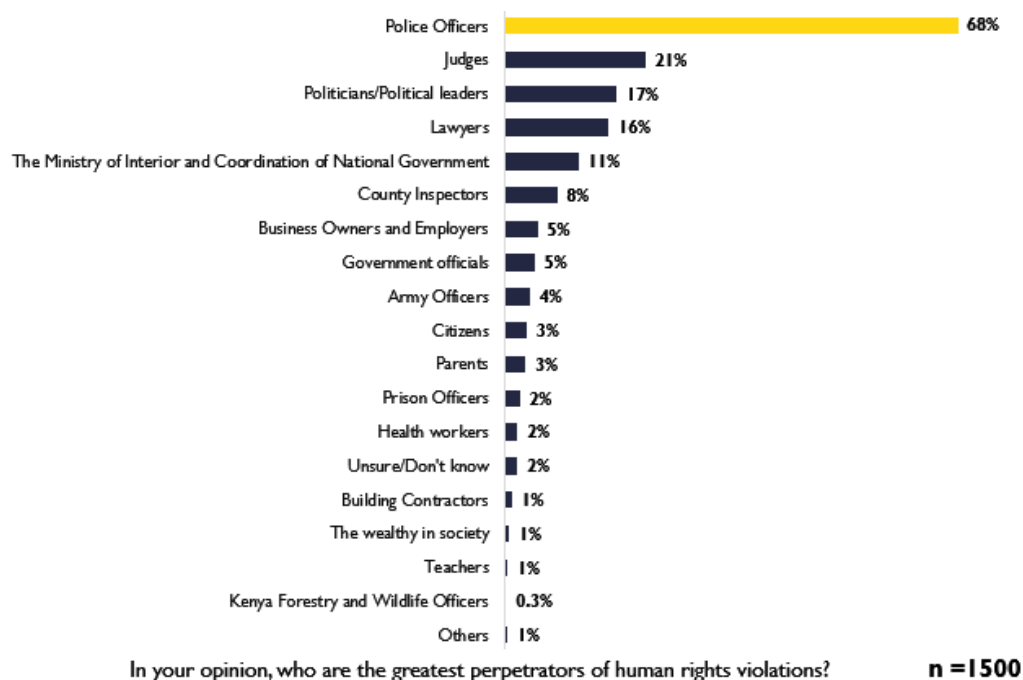
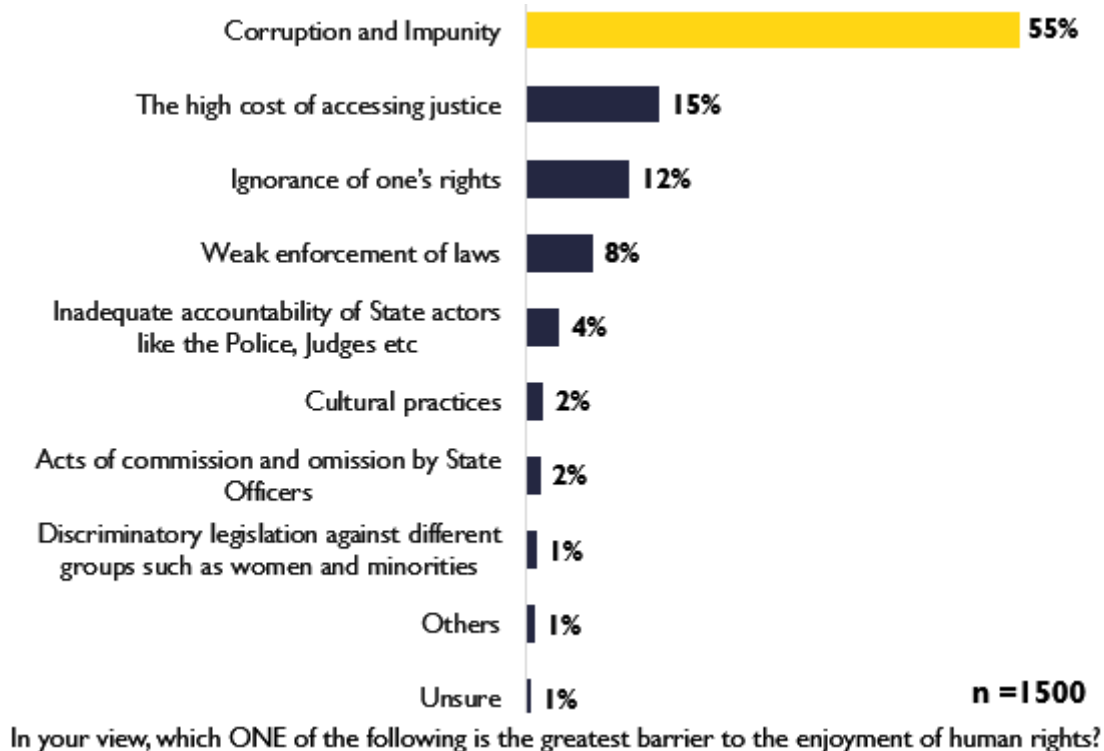
The most common violations of human rights are acts of police brutality (49%), poverty (21%), sexual and gender-based violence (16%) and the right to health (14%). Central and Nairobi are the most affected regions by police brutality. Men are currently more concerned about this than women (52%). Overall, women experience higher levels of violations. Interestingly, violations do not significantly decrease as Kenyans get older.

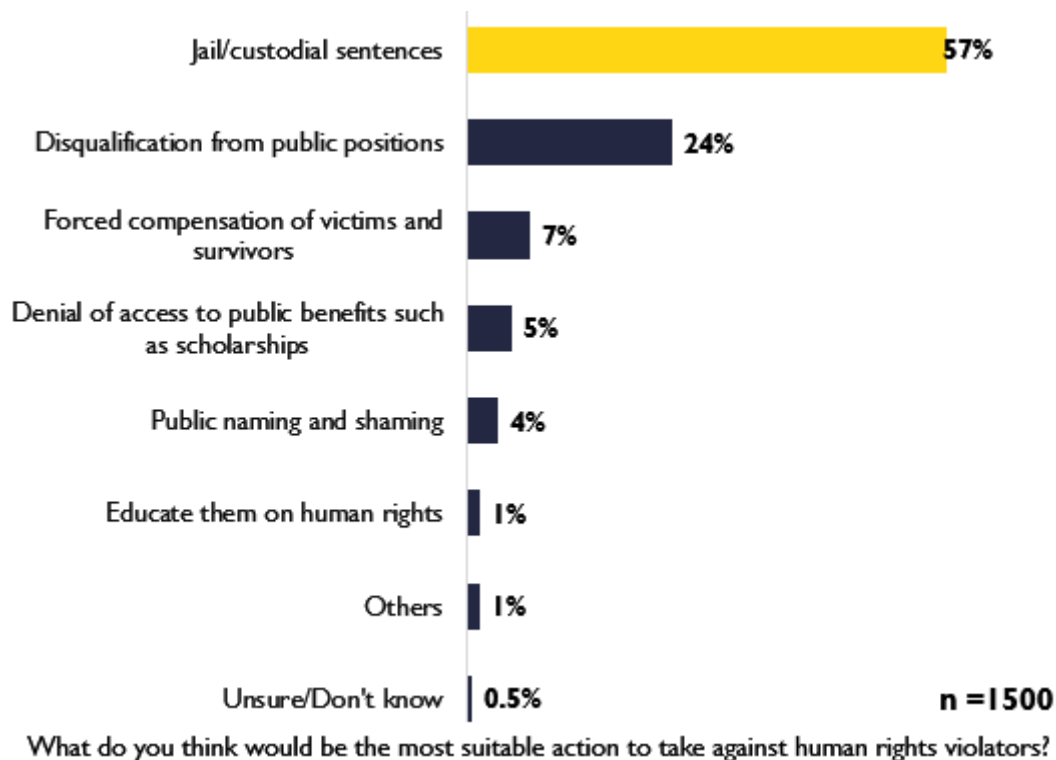


Focusing on human rights, which human rights violations would you say are the most common in your area? n = 1500

## 5. WHO OR WHAT IS SUFFOCATING THE CONSTITUTION?

Fifty-five per cent of Kenyans believe that corruption and impunity are the greatest hinderances to the realisation of the Constitution. 15% cite the high cost of access to justice. 68% of Kenyans say that police officers are the greatest perpetrators of human rights violations especially in Eastern. Police Officers are followed by judges (21%), politicians (17%) and lawyers (16%) respectively. 57% of Kenyans want human rights perpetrators to be jailed and 24% want them red-carded or disqualified from holding public positions.





## 6. HOW READY ARE CITIZENS TO PROTECT AND EXPAND RIGHTS AND FREEDOMS?

Thirty-six per cent of Kenyans will take no action when faced with human rights abuses. 33% will report to the police while 27% will publicly demonstrate against violators. 33% will report to the police while 27% will publicly demonstrate against violators. People in Eastern are more likely to do nothing while their counterparts in North Eastern and Western are most likely to go to the police. People in Central and Rift Valley are most likely to demonstrate against perpetrators. Sexual and gender-based violence (55%) and domestic violence (48%) are the most reported violations to the police. 35% of Kenyans are prepared to demonstrate against police brutality.

	Police brutality	Sexual and gender based violence	Right to health services (denial or detention)	Ethnic discrimination	Gender discrimination	Arbitrary arrests	Domestic violence
Done nothing	32%	27%	23%	33%	33%	30%	37%
Reported the violators to the Police	34%	55%	36%	34%	41%	42%	48%
Demonstrated against the violators	35%	31%	38%	31%	29%	33%	18%
Contacted a human rights organisation	9%	11%	16%	10%	14%	7%	2%
	Mob violence	Denial of access to sanitation amenities	Forced eviction	Denial of opportunities in education	Racial discrimination	Religious discrimination	Child protection
Done nothing	13%	38%	14%	27%	30%	28%	42%
Reported the violators to the Police	53%	17%	43%	35%	30%	54%	46%
Demonstrated against the violators	54%	19%	30%	29%	32%	25%	4%
Contacted a human rights organisation	21%	15%	26%	22%	12%	9%	4%

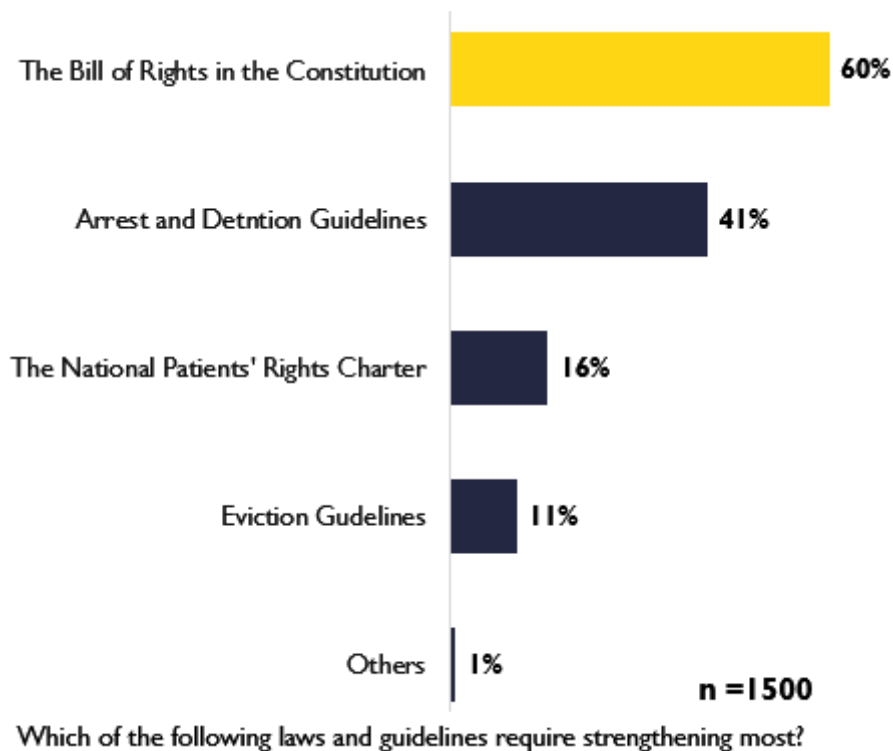
When the human rights violations you have mentioned in the previous question have occurred, how have the residents in your area responded or acted?

**n = 1338**



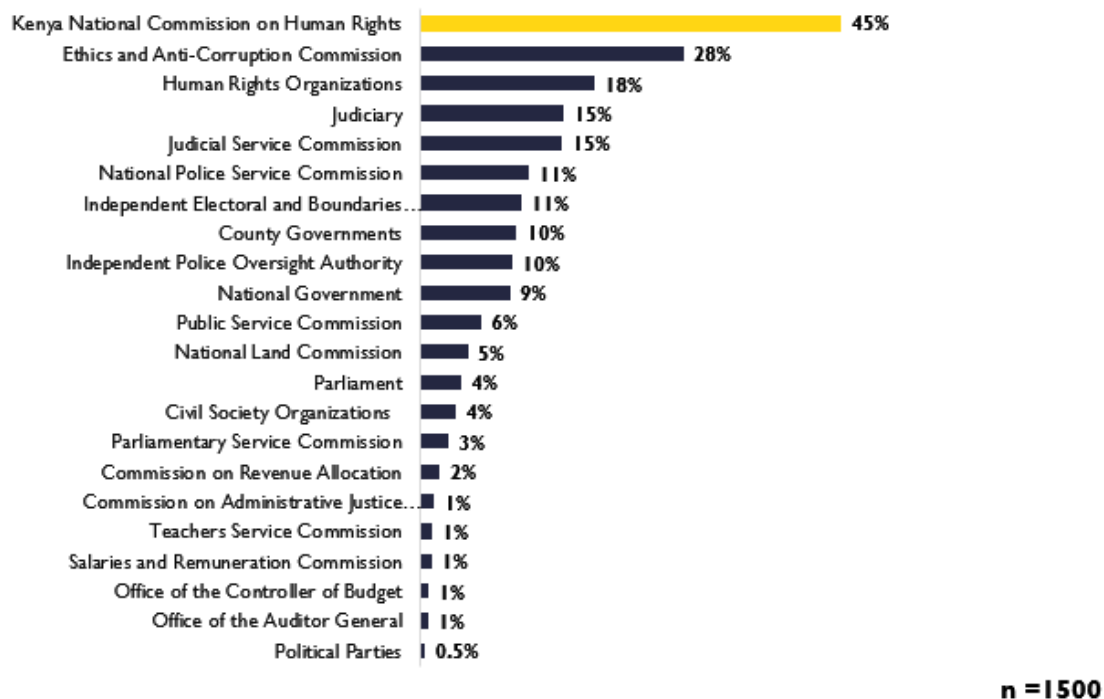
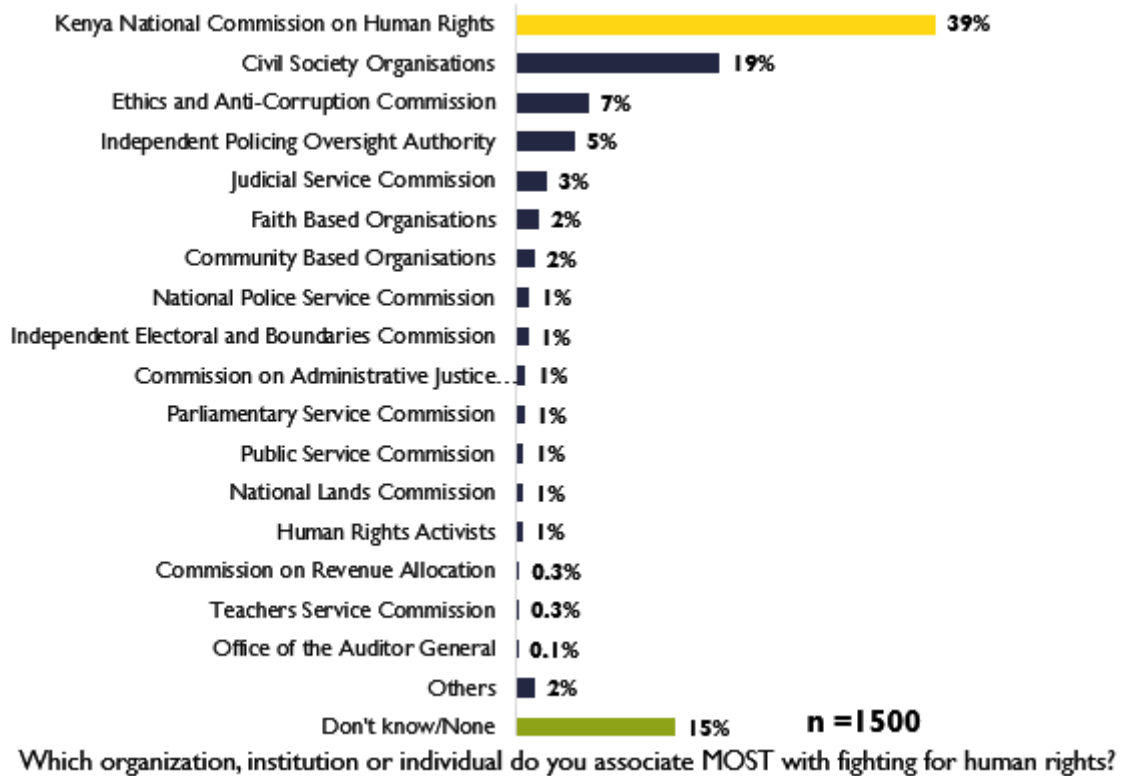
## 7. LAWS AND GUIDELINES WE NEED TO REINFORCE

Sixty per cent of Kenyans want stricter enforcement of the Bill of Rights. 41% want increased enforcement of the rights of arrested persons laws and 16% want strict enforcement of the Patient Rights Charter. The call for stricter enforcement of the Bill of Rights is loudest in North Eastern (67%), Western (66%) and Nyanza (66%). 5 in 10 people at the Coast want firmer enforcement of the rights of arrested persons laws.



## 8. ORGANISATIONS WE NEED TO REINFORCE

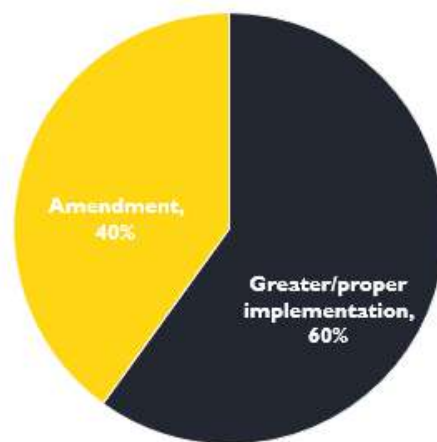
Thirty-nine per cent of Kenyans recognise the Kenya National Commission on Human Rights (KNCHR) as the most active and visible organisation in the fight for human rights followed by civil society and human rights organisations (19%) and the EACC (7%). 45% of them want the KNCHR strengthened. Kenyans also want the EACC (28%), Human Rights Organizations (18%), Judiciary and the Judicial Service Commission (15%) strengthened. Support for strengthening KNCHR is strongest in Western, Central and Coast while support for the strengthening of the EACC is strongest in North Eastern.



Which of the following institutions should be reformed/strengthened to enhance implementation of the Bill of Rights?

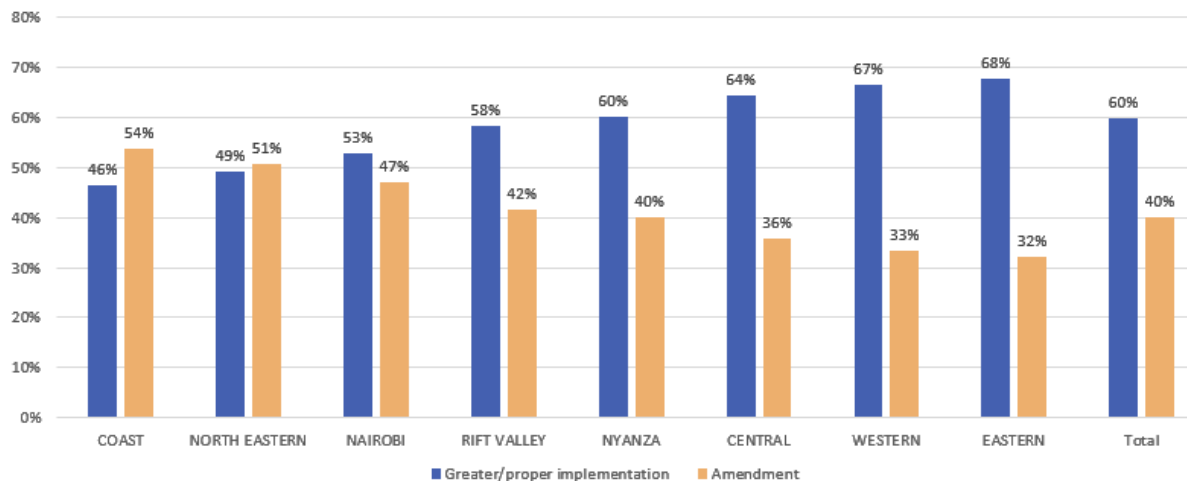
## 9. DO WE NEED TO ENFORCE OR AMEND THE CONSTITUTION THEREFORE?

Sixty per cent of Kenyans want the constitution enforced rather than amended. This support is strongest among Kenyans aged under 49 and those living in urban areas. 40% want it amended. Support for full implementation of the Constitution is highest in Eastern (68%), Western (67%), Central (64%) and Nyanza (64%). Support for amendment is highest in Coast (54%) and North Eastern (51%). Unsurprising, almost half of those calling for amendment are concerned with the challenges of realizing Chapter 6 (Leadership Integrity) and Chapter 11 (Devolved Governance).



**n = 820**

In your opinion, which of the following two aspects does the current Constitution of Kenya require?



In your opinion, which of the following two aspects does the current Constitution of Kenya require? **n = 820**

## CONCLUSION

The 2010 Constitution and its' Bill of Rights has been hailed as one of the most progressive legal instruments internationally. The challenge has been to translate the commitment to tangible action for most of the citizens.

While the Bill of Rights guarantees the right to dignity and justice for all persons and communities, the reality on the ground is very different for most. State sanctioned outright violation of human rights are a common occurrence. From the unlawful use of lethal force and brutality by police to unlawful evictions, criminalizing freedom of expression and curtailment of the right to assembly, the pattern of subjugation remains endemic and cancerous.

The performance of the devolved governance and county governments has been starkly different across counties. Visibly, some counties have shown commitment towards addressing emergent development issues, while some are struggling to meet the very least of expectations. Citizen participation in county related matters has been cosmetic with little reference to citizens' heartfelt needs. Corruption remains the single most serious threat to human rights and devolution as finances earmarked for development programs have been diverted for personal gain.

Kenyans must continue to demand for accountability from all State institutions. The people elected or appointed to run them must be people of integrity. Key State and non-state actors concerned with entrenching constitutionalism and the protection of human rights must be adequately funded and shielded from partisan interests.

These findings reveal no evidence that there is an urgent need to amend the constitution. There is, however, an imperative to accelerate all steps towards its' full implementation. The experience of the first decade suggests that Kenyans must continue to demand and agitate for full implementation of the Constitution. We have a progressive constitution. What is needed is deepen the culture of constitutionalism and fidelity to the rule of law.

*“When the constitution was promulgated in 2010 there was a feeling of transparency in government appointments. Interviews being conducted in the open and the public was asked to participate.”*  
Appointed State Officer

*“The violation of civil and political rights is more evident, more observable today” – CSO Citizen*

*“From the Parliament to the Executive and Judiciary, state agencies are taking shortcuts. Non-governmental organizations have gone to sleep. We are no longer following the Constitution.”*  
Member of Parliament

*“...We created the Chapter 15 commissions for a reason. Today, all of them have no funds to operate and only have money for salaries and administration. All their program work is funded by donors. What does that tell you about Governments’ commitment to ensure these institutions hold them to account?”* Appointed State Officer

*“We have not fully and faithfully implemented the Constitution”* Appointed State Officer

*“There is no constitutional moment at all. It is only the political elite trying to retain their relevance but not in the interest of this country. If an elected government continually defies court orders - left, right and center - where is the constitutional moment?”* Constitutional expert

*“If prior to 2010 we were a country in search of constitution, one decade later we have a constitution in search of a country”* CSO Officer

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#TekelezaKatiba  
#DistressedYetDefiant