



# MISSED OPPORTUNITIES

---

A Scorecard on the Jubilee Administration  
and Lessons for the Next Government

July 2022

KENYA

AMNESTY  
INTERNATIONAL



Except where otherwise noted, all original content in this document is licensed under a Creative Commons license. All users must attribute this document's contents back to this report and not suggest that we endorse your use of the work. You are free to share this work as long as it is on a non-commercial basis.

<http://creativecommons.org/licenses/by-nc-nd/4.0/legal-code>

First Published July 2022

Address:

Amnesty International Kenya

Riverside Lane, Off Riverside Drive

P.O BOX 1527-00606

Tel: +254 020-4283000

Email: [amnesty.kenya@amnesty.or.ke](mailto:amnesty.kenya@amnesty.or.ke)





## Abbreviations and Acronyms

ACHPR	–	African Charter on Human and Peoples Rights
CA	–	Communications Authority of Kenya
CEDAW	–	Convention on Elimination of all Forms of Discrimination against
CoG	–	Council of Governors
CoK	–	Constitution of Kenya 2010
Covid-19	–	Corona Virus Disease
CRPD	–	Convention on the Rights of Persons with Disabilities
DCI	–	Directorate of Criminal Investigations
EACC	–	Ethics and Anti-Corruption Commission
FGM	–	Female Genital Mutilation
GBV	–	Gender-Based Violence
GDP	–	Gross Domestic Product
ICCPR	–	International Covenant on Civil and Political Rights
ICESCR	–	International Covenant on Economic, Social, and Cultural Rights
IEBC	–	Independent Electoral and Boundaries Commission
IMF	–	International Monetary Fund
IMLU	–	Independent Medico-Legal Unit
IPOA	–	Independent Policing Oversight Authority
KCC	–	New Kenya Cooperative Creameries
KMPPDU	–	Kenya Medical Practitioners, Pharmacists, and Dentists Union
KRA	–	Kenya Revenue Authority
KEMSA	–	Kenya Medical Supplies Authority
KICA	–	Kenya Information and Communications Act
KMPDU	–	Kenya Medical Practitioners, Pharmacists and Dentists Union
KNCHR	–	Kenya National Commission on Human Rights
KRA	–	Kenya Revenue Authority
LGBTIQ+	–	Lesbian, Gay, Transgender, Intersex and Queer
MCK	–	Media Council of Kenya
MES	–	Managed Equipment Services Project
MTP2	–	Second Medium-Term Plan
MTP3	–	Third Medium-Term Plan
MUHURI	–	Muslims for Human Rights
MVA	–	Missing Voices Alliance
NHIF	–	National Hospital Insurance Fund
NICT	–	National Information, Communications and Technology
NIIMS	–	National Integrated Identity Management System
ODPP	–	Office of the Director of Public Prosecutions
ORPP	–	Office of the Registrar of Political Parties
PAC	–	Parliamentary Accounts Committee
PHC	–	Parliamentary Health Committee
PHM	–	People's Health Movement
PIC	–	Public Investments Committee
PPADA	–	Public Procurement and Assets Disposal Act
PPE	–	Personal Protective Equipment
UDHR	–	Universal Declaration of Human Rights
UNHCHR	–	United Nations High Commissioner for Human Rights
UNHRC	–	United Nations Human Rights Council
UPR	–	Universal Periodic Review Mechanism
WHO	–	World Health Organisation



# Table of Contents

Abbreviations and Acronyms .....	ii
Dedication .....	v
Scope, Methodology and Acknowledgement .....	6
Summary of Findings and Recommendations .....	7
Matrix 1: The Human Rights Jubilee Scorecard at a Glance .....	8-9
Recommendations .....	10
Other Actions Required for Realisation of Fundamental Freedoms and Rights .....	13
1.0: Background to the Scorecard .....	14
1.1: Why this Scorecard and Why Now? .....	14
1.2: Methodology .....	15
2.0: Liberty and Security of Person .....	16
2.1: Norms and Standards .....	16
2.2: The Jubilee Government Commitments .....	16
2.3: Status of Implementation .....	17
3.0: Civic Space and Freedoms .....	24
3.1: Norms and Standards .....	24
3.2: The Jubilee Government Commitments .....	24
3.3: Status of Implementation .....	25
4.0: Right to the Highest Attainable Standard of Health .....	33
4.1: Norms and Standards .....	33
4.2: The Jubilee Government Commitments .....	34
4.3: Status of Implementation .....	34
5.0: Right to Adequate Housing .....	44
5.1: Norms and Standards .....	44
5.2: The Jubilee Government's Commitments .....	44
5.3: Status of Implementation .....	45
6.0: The Right to Food .....	49
6.1: Norms and Standards .....	49
6.2: The Jubilee Government's Commitments .....	49
6.3: Status of Implementation .....	50
Bibliography .....	53
APPENDIX 1: Response of the Government of Kenya to the Scorecard .....	63
Endorsed by .....	71

## Dedication

We dedicate this report to those that did not live to read it.

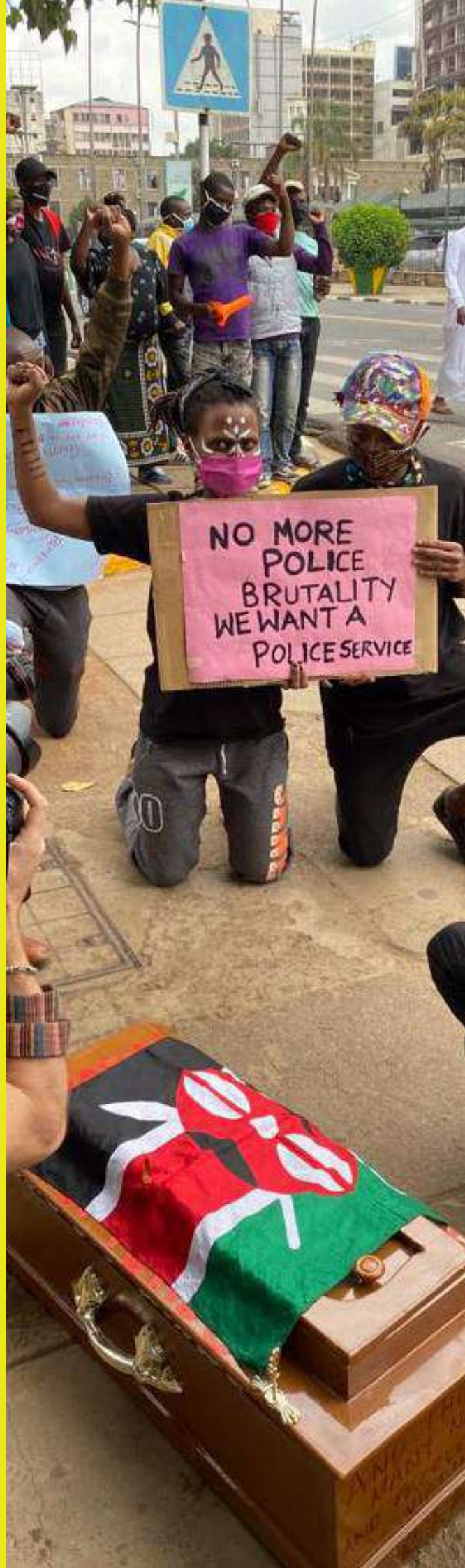
These include more than 5,500+ victims of the Covid-19 pandemic, and the thousands of victims of extrajudicial killings and enforced disappearances, including Yassin Moyo (13) of Kiamaiko. We also dedicate this report to Ebbie Samuels (15), and all other children killed or hurt by school administrators amidst the rising call for a return of corporal punishment in our schools, and the 40,000 residents of the demolished community of Mukuru kwa Njenga. We cherish the memory of the late Sheila Lumumba, Ugandan refugee Chriton “Trinidad” Atuhwera and all persons from the LGBTIQ+ community who have been victims of hate crimes, the more than thirty unknown human beings discovered floating down the Yala River in Siaya; and all other persons who have been disempowered or left unprotected by their experience of the eleventh and twelfth states.

This report is not a mere indictment of Kenya’s constant search for the freedoms and rights contained in the constitution. The report is a reminder that we can do more to promote, protect, and realise social justice for all.

As we light a candle in the memory of those that we failed, we also dedicate this report to all those in civil society, government agencies, and the business sector who rose to restore dignity, safety, and fundamental freedoms over the last decade.

We have worked with and continue to be inspired by several individual policymakers, professionals, community leaders, prison warders, school students, teachers, health workers, lawyers, judges, prosecutors, police officers, accountants, refugees, religious leaders, politicians, diplomats, and human rights defenders.

We encourage the thirteenth state to establish new human rights standards in line with the Constitution of Kenya (2010) (CoK) for all persons.





## Scope, Methodology and Acknowledgement

Amnesty International Kenya commissioned this scorecard to independently review the progress made by the Jubilee government regarding five parameters of political, social, economic and cultural rights and freedoms contained in the Constitution of Kenya (2010). Underlying the assignment is the presumption that parameters such as civic freedoms and space, the right to life, health, adequate housing and food variously and collectively affect the safety, dignity, freedom and development of millions of Kenyans.

Noteworthy, however, is that this report is not intended to be an exhaustive examination of all areas of the performance of the Jubilee administration. We hope that other agencies and individual citizens will review the last decade through different lenses and encourage informed voting during the forthcoming elections slated for 9th August 2022. We further hope that other agencies and individuals will strive to hold the next 47+1 administrations accountable to a higher standard of delivery.

Nine other human rights organisations and trade unions offered their experience and insights in the research and writing of this report. They include The Nubian Rights Forum, The People's Health Movement (PHM), White Ribbon Alliance, Umande Trust, Kenya Medical Practitioners, Pharmacists and Dentists Union (KMP-DU), Pamoja Trust, HIVOS, Wangu Kanja Foundation, and Defenders Coalition. This report is collectively published by the ten civic organisations.

We are collectively thankful to Lawrence Mute and Gakii Mbae, our staffers and all those who contributed by granting interviews, writing, and editing of this report. We appreciate the Government of Kenya for exercising their right of reply. We have incorporated their data in this final report and attached their full response as an appendix. We, however, are responsible for the conclusions that this report makes and invite readers to draw their own conclusions and recommendations for the incoming national and county administrations.

We encourage you to share your thoughts about the emerging policy manifestos and elections platforms that continue to be announced by candidates contesting for different elective offices. Hold those who seek to form the next government accountable for the tremendous responsibility they have for the 47 million Kenyans in the thirteenth state.



## Summary of Findings and Recommendations

Uhuru Kenyatta, during his swearing in as the 4th President of Kenya on 9th April 2013, promised economic transformation, national unity, free maternal care, and improved education standards. Kenyans welcomed these commitments. As he prepares to hand over power to the fifth president, it is important to reflect on the achievements and failures of the Jubilee administration under President Uhuru Kenyatta over the past ten years of his regime.

This report acknowledges that there have been important achievements, especially in infrastructure development, health access and promotion of rights of intersex persons. However, there have also been grave and consistent lapses in protecting Kenyans against human rights violations. Notable instances include the failure to operationalise the Public Benefits Organization Act (2013) and the introduction of the Security Laws Amendments (2014), which interfered with the independence of civil society organisations, key independent constitutional offices, and undermined freedom of assembly and expression.

Furthermore, despite persistent documentation, media publicity and actions by oversight agencies, extrajudicial killings and enforced disappearances have neither been eliminated nor reduced. The right to privacy and data protection for millions of Kenyans was repeatedly violated by government security agencies, including those responsible for population census and citizen registration programmes. Unconstitutional, forceful, and inhumane evictions of tens of thousands of Kenyans across informal settlements and forests within Kenya violated the victims' right to adequate housing and livelihoods.

The Jubilee administration performed better in the right to health. The ten years of the Jubilee administration saw an increase in improved facilities across the country, especially in Nairobi. Catalysed by the existential threat posed by the Covid-19 pandemic, the increased access to medical facilities and vaccines undoubtedly saved many lives in the second term of the administration. Corruption and public finance mismanagement, which were endemic in the first term, resurfaced in the Kenya Medical Supplies Authority (KEMSA) scandal during the pandemic.

Reviewing five areas of rights and their twenty-three sub-themes, the scorecard holds that the Jubilee administration failed to realise critical human rights obligations to meaningfully enable all people to enjoy the fundamental freedoms and rights as envisaged in

the Constitution of Kenya's five critical areas. Various policy, legislative and institutional measures were under-resourced, minimised, or did not prioritise the public's right to information and participation. The next administration is advised to frame its development and governance obligations within a human rights centred approach.

Covid-19 disrupted all areas of the economy and occasioned restrictions of freedoms and rights in ways only comparably to the state of emergency in the 1950s. This tested the Jubilee administration – and many other governments around the world – in ways that were impossible to predict before the pandemic.

Rampant corruption, wasteful public finance expenditure, and excessive borrowing crowded out valuable resources for essential services and the implementation of the Bill of Rights. A human rights-based budget analysis of the last five years demonstrates low social sector spending. In this regard, social protection, health, education, and water and sanitation averaged only 11% of the total budget, and a meagre 3% of GDP for the period 2018-2021.

With increased debt servicing costs already crowding out 38% of the total budget and 63% of the total domestic revenues, these low investments in the social sector make the realisation of economic, social and cultural rights impossible to attain.

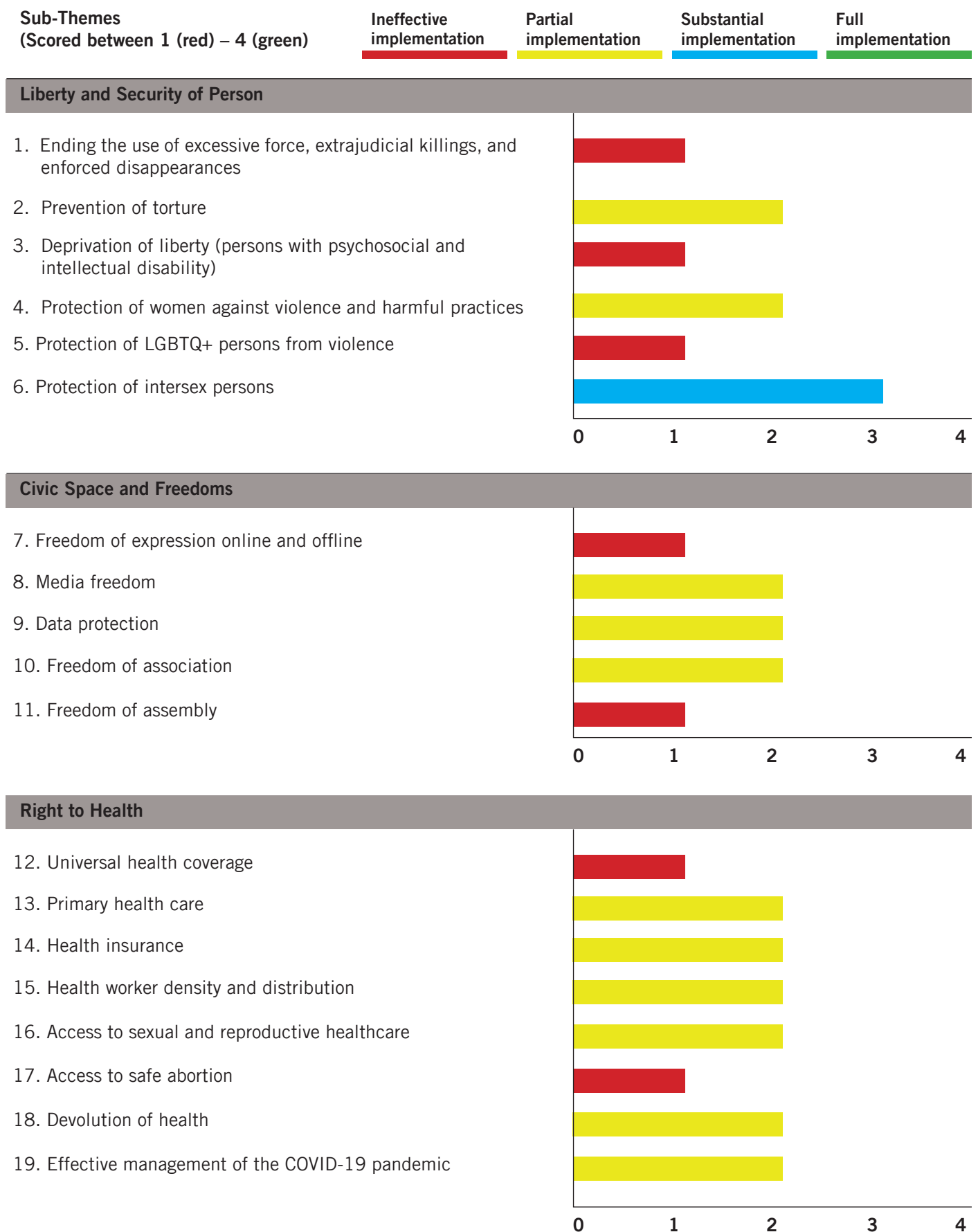
Kenya currently has a poor ranking of 53 out of 120 countries in the global International Budget Partnership Kenya Annual Survey. The survey assesses the quality of public participation, budget transparency and oversight. It ranks Kenya sixth behind South Africa.

In just under two months, new national and county governments will face a debt-distressed and defaulting economy that is too weak to absorb the shocks of climate change and the Covid-19 pandemic. The cost of living will rise as the economy and national treasury coffers shrink. Fiscal austerity and economic kidogo-isation will lead to louder demands for more accountability, budget transparency, and decisive anti-corruption action by Kenyans.

Now dependent on sovereign credit ratings, IMF prescriptions and external financing, external pressures on Kenya for better public participation, budget transparency and oversight will also increase. Any failures in this regard will lead to a macro-economic meltdown, more distress-related crimes, tax evasion, and possibly public protests. Therefore, the incoming national and county administrations must prioritise, budget transparency, public participation, and oversight, as well as zero-tolerance for corruption.



# Matrix 1: The Human Rights Jubilee Scorecard at a Glance







**Sub-Themes**  
(Scored between 1 (red) – 4 (green))



**The Right to Adequate Housing**



**The Right to Food**



With 33 out of 72 points, the Jubilee administration has scored 46% on the Human Rights Scorecard. Regrettably, the Jubilee Administration did not meet the threshold of effective implementation in any of the five areas reviewed against the 23 sub-themes. As the Jubilee administration’s term ends, 28 million Kenyans remain deprived of very basic social and economic rights, while over 4 million people currently sleep hungry.

Noteworthy, though, is that the government has scored highest in the areas of rights of intersex persons, civic freedoms, public health and, to a limited extent, housing.



## Recommendations

The CoK binds the government, every state organ, and citizens to adhere to its provisions. All political parties' manifestos and candidates seeking elective office must state their policy and budgetary commitment to observe, respect, protect, promote, and fulfil the rights and fundamental freedoms in the Bill of Rights. The Bill of Rights in Chapter 4 of the CoK, and the progressive realisation of rights guaranteed under Article 43 are non-negotiable. The leadership and integrity articles in Chapter 6 are not optional either, but rather a legal standard for every state organ and state officer.

The following recommendations identify policy, legislative, and administrative measures for the first 365 days of the incoming national government and 47 county governments if they wish to improve on the track record of the Jubilee administration.

## Liberty and Security of Person

The incoming administrations, through their ministries of constitutional affairs, must take ten urgent steps to:

**Table 1: Recommendations on Securing Liberty and Security of Person**

Action Required		Timelines
1.	Publicly reaffirm all institutions are prohibited from committing extrajudicial killings, enabling forced disappearance, torture and ill-treatment and release or charge in a court of law any persons currently in their custody.	Within 100 days
2.	Audit and publicly announce the identities and circumstances of all victims of extrajudicial killings, enforced disappearance, torture and ill-treatment	Within 100 days
3.	Institute, publicly announce and operationalise an expedited process of prosecuting state officers while providing effective victim redress	Within 180 days
4.	Operationalise institutional mechanisms and resources for the effective implementation of the Prevention of Torture Act, the National Coroners Service Act, and the Victim Protection Trust Fund	Within 180 days
5.	Undertake measures to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	Within 180 days
6.	Operationalise the PBO Act and amend the National Security Laws Amendment	Within 180 days
7.	Adopt and implement a comprehensive anti-discrimination law that protects all individuals, irrespective of their sexual orientation or gender identity	Within 180 days
8.	Accelerate budgeting for public gender violence recovery centres and shelters across the country; fast-track anti-sexual and gender-based crime strategies for the Police Service, the Director of Public Prosecutions, and the Judiciary	Within 180 days
9.	Introduce legislation to abolish the death penalty	Within 365 days
10.	Audit and reform the criminal justice system to ensure equal access, de-criminalisation and just treatment of persons with psychosocial and intellectual disability by amending the Criminal Procedure Code, the Penal Code and the Evidence Act and other relevant laws	Within 365 days



## Civic Space and Freedoms

The incoming national and county administrations must take four urgent steps to:

**Table 2: Recommendations on Protecting Civic Space and Freedoms**

Action Required		State Organ	Timelines
1.	Publicly re-affirm the right of all Kenyans to express themselves, freely associate and assemble, and the safety of journalists and the media when conducting their work.	Ministries in charge of Interior and ICT	Within 100 days
2.	Review all laws restricting civic space, including the Computer Misuse and Cybercrimes Act.	Ministry in charge of Legal Affairs	Within 180 days
3.	Increase funding to ensure full implementation of the Data Protection Act, and review all government programmes operating with the risk of large data breaches	Ministry in charge of ICT	Within 180 days
4.	Increase resources to the independent offices such as the Kenya National Commission on Human Rights, Director of Public Prosecutions, and the Judiciary, all of which that monitor civic freedoms and promote citizens' rights..	Ministry in charge of the National Treasury	Within 180 days

## Right to the Highest Attainable Standard of Health

Through their respective ministries in charge of health, the incoming national and county administrations must take six urgent steps to:

**Table 3: Recommendations on how to Achieve the Highest Attainable Standard of Health**

Action Required		Timelines
1.	Participatory public review and launch a more comprehensive Universal Health Coverage Programme, involving health stakeholders	Within 180 days
2.	Substitute the subscription-based health financing model with a tax-supported model of health financing to ensure access by the poorest and most vulnerable populations	Within 365 days
3.	Expand and improve public health facilities and infrastructure, increase healthcare workforce, and improve working conditions	Within 365 days
4.	Ensure there is one doctor and one community health worker for 1,000 Kenyans and 50 households, respectively, and prioritise primary health promotion and disease prevention	Within 365 days
5.	Ring-fence NHIF for public facilities only and increase funding for public facilities	Within 180 days
6.	Invest adequately in health workers and health infrastructure	Within 180 days
7.	Finalise and disseminate safe abortion guidelines and standards, publish standards and guidelines for reducing morbidity and mortality from unsafe abortion in Kenya and the national training curriculum for the management of unintended, risky and unplanned pregnancies.	Within 180 days



### Right to Adequate Housing

Through their ministries in charge of housing, the incoming administrations must take four urgent steps to:

**Table 4: Recommendations on Securing the Right to Adequate Housing**

Action Required		Timelines
1.	Audit, resettle, and compensate all victims of state-enforced evictions across the country	Within 180 days
2.	Declare a moratorium on all forced evictions until the enactment of the Evictions and Resettlement Procedures Bill	Within 180 days
3.	Ensure all persons living in informal settlements and on land without title deeds have security of tenure or are resettled on land that has security of tenure	Within 365 days
4.	Prohibit forced evictions and ensure that all development projects are human rights compliant.	Within 180 days
5.	Ensure that all persons, including vulnerable persons such as children, women, and persons living with disability; and people living in informal settlements, have access to essential services such as safe water and good sanitation facilities.	Within 180 days

### Right to Adequate Food

The incoming national and county governments, via their ministries in charge of food security, administrations must take two urgent steps to:

**Table 5: Recommendations on Securing the Right to Adequate Food**

Action Required		Timelines
1.	Audit current food security policy, accelerate climate-smart and small-scale agriculture investment	Within 180 days
2.	Audit and announce inefficient food distribution systems, food wastage, limited storage facilities and poor infrastructure for accessing markets.	Within 180 days



## Other Actions Required for Realisation of Fundamental Freedoms and Rights

Incoming national and county administrations must take these additional four urgent steps to:

**Table 6: Summary of Actions Required to Entrench Fundamental Freedoms and Rights**

Action Required		State Organ(s)	Timelines
1.	Announce and implement a renewed approach to public participation and accountability in transparent allocation and protection of public budgets	Ministry in charge of national treasury and Council of Governors	Within 180 days
2.	Implement anti-fraud measures recommended by the Office of the Auditor-General and the Ethics and Anti-Corruption Commission	Ministry in charge of national treasury and Council of Governors	Within 180 days
3.	Commit to auditing and reducing the wage bill and bench-marking allowances to State Officers	Ministry in charge of national treasury and Council of Governors	Within 180 days
4.	The Council of Governors and Senate to compel the national treasury to prioritise regular disbursements to county governments.	Council of Governors and Senate	Within 180 days

**“ In just under two months, new national and county governments will face a debt-distressed and defaulting economy that is too weak to absorb the shocks of climate change and the Covid-19 pandemic. The cost of living will rise as the economy and national treasury coffers shrink. Fiscal austerity and economic kidogo-isation will lead to louder demands for more accountability, budget transparency, and decisive anti-corruption action by Kenyans.**

**”**





## Endorsed By





WOMEN WANT  
THRIVE  
SURVIVE  
#Breakthebias  
ect us!

**KENYA**

**AMNESTY  
INTERNATIONAL**



**TOGETHER WE CAN END  
SEXUAL AND GENDER-BASED  
VIOLENCE**

**ORANGE THE WORLD  
END VIOLENCE AGAINST WOMEN**

OUR TOLL-FREE  
0800 720 501

