



MISSED OPPORTUNITIES

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

July 2022

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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



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Dedication

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

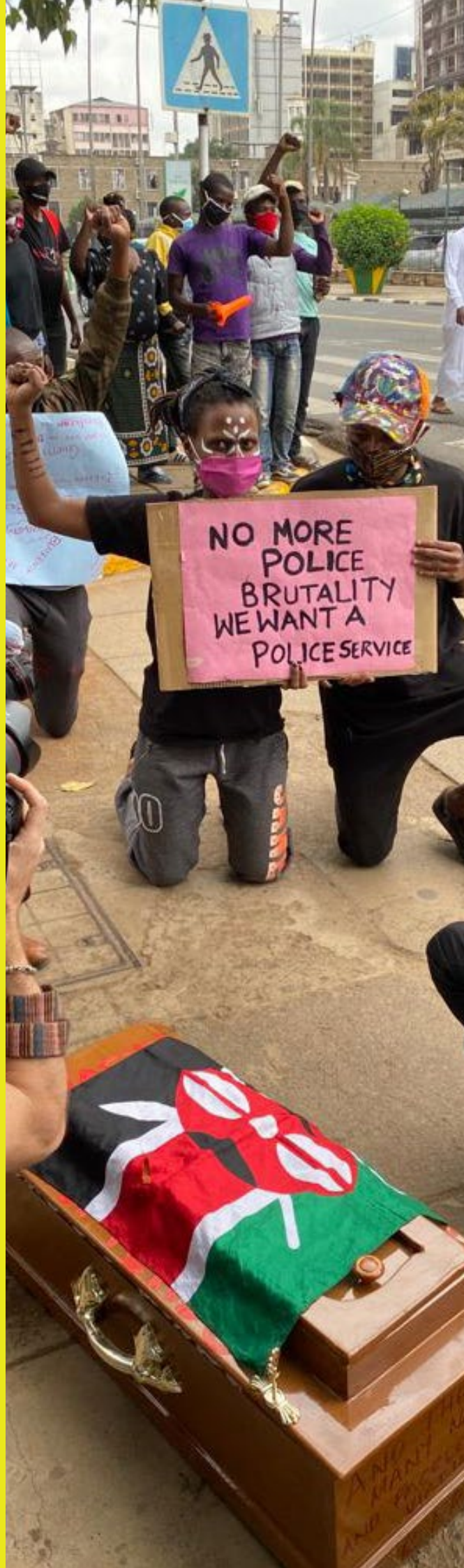
These include more than 5,500+ victims of the Covid-19 pandemic, and the thousands of victims of extrajudicial killings and enforced disappearances, including Yassin Moyo (13) of Kiamaiko. We also dedicate this report to Ebbie Samuels (15), and all other children killed or hurt by school administrators 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 (KMPDU), 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.

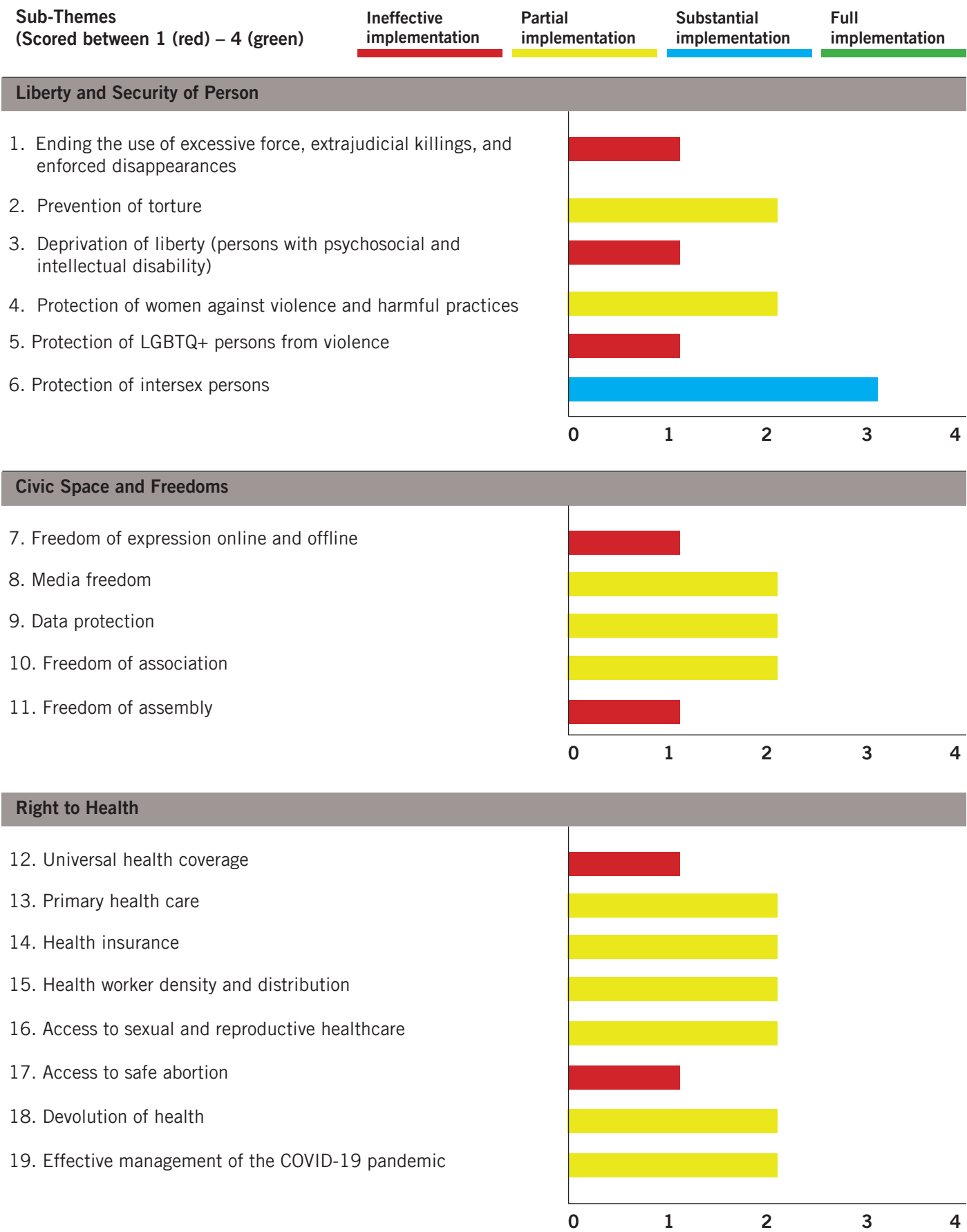
Kenya currently has a poor ranking of 53 out of 120 countries in the global International Budget Partnership Kenya Annual Survey. The survey assesses the quality of public participation, budget transparency and oversight. It ranks Kenya sixth behind South Africa.

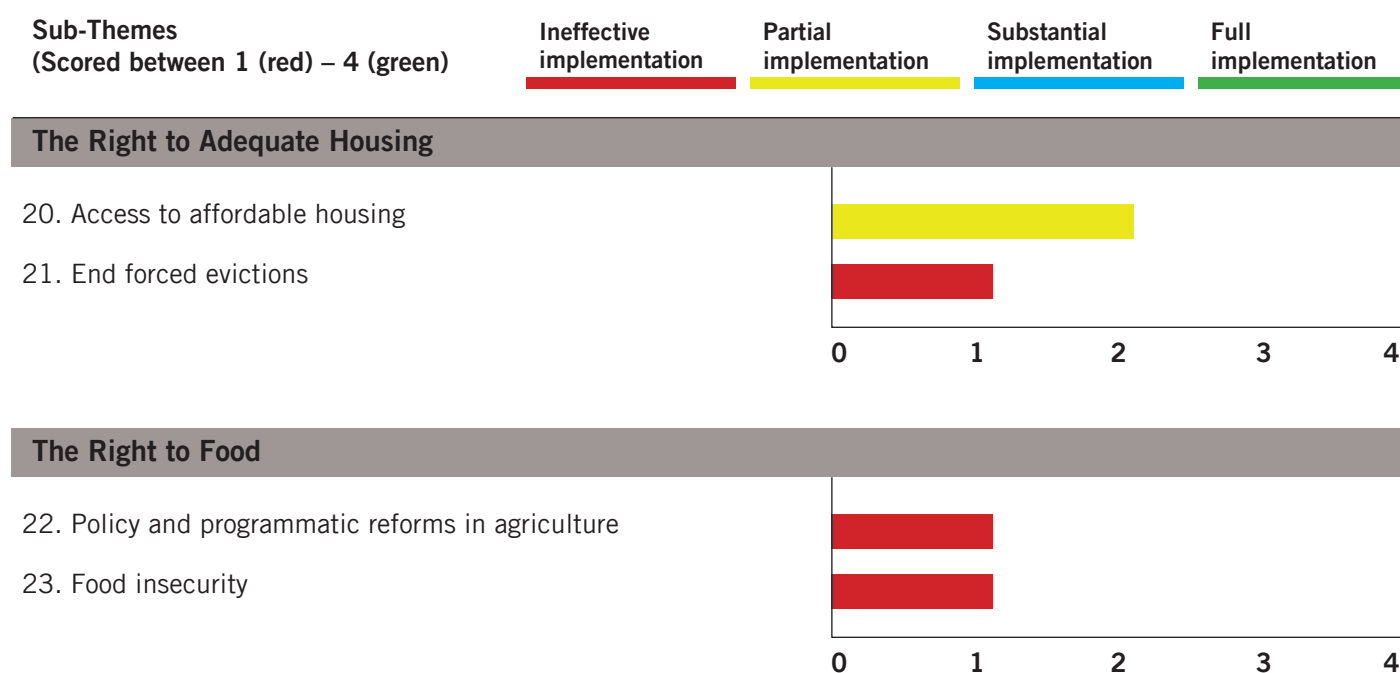
In just under two months, new national and county governments will face a debt-distressed and defaulting economy that is too weak to absorb the shocks of climate change and the Covid-19 pandemic. The cost of living will rise as the economy and national treasury coffers shrink. Fiscal austerity and economic 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





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 identity 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

Table with 2 columns: Action Required, Timelines. 10 rows of recommendations.



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



1.0: Background to the Scorecard

The Constitution of Kenya (2010) obligates every state organ to ensure all Kenyans enjoy all fundamental freedoms and rights regardless of their economic, social, or political status or circumstances. The Bill of Rights is integral to democratic, open, and accountable governance. It elaborates several civil, political, economic, social, and cultural rights that promote freedoms, social justice, and human dignity of all Kenyans.²

Kenyans mandate their government every five years through presidential, parliamentary, and gubernatorial elections nationally and across 47 devolved counties. The election of the Jubilee Government in 2013 and again in 2017 was a mandate to progressively realise a constitutional duty of promoting, protecting, and fulfilling the rights and fundamental freedoms as envisaged and captured in the Bill of Rights.³

1.1: Why this Scorecard and Why Now?

Human rights organisations are obligated to monitor and hold states accountable for the fulfilment of fundamental human rights and freedoms. Kenya is a party to various international and continental human rights instruments and normative standards. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), African Charter on Human and Peoples' Rights (ACHPR). A further set of human rights instruments protect women from discrimination⁴ and ensure equality for persons with disabilities⁵.

Collectively, these human rights instruments establish the respect-protect-fulfil obligation of the Jubilee Administration. This responsibility is distinguished by obligations to do no harm and obligations to act. The obligation to respect requires states to refrain from unlawful or arbitrary interference with the rights of people. For example, security officers may not participate in the extrajudicial killing of a person in the guise of fighting terrorism or any other menace. State officers should also ensure private developers do not violate the due process by forcibly evicting people from privately-owned land.

² Article 19 of the Constitution of Kenya (2010) <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010>

³ *ibid* Article 21.

⁴ The 1979 Convention on Elimination of all Forms of Discrimination against Women and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

⁵ 2006 Convention on the Rights of Persons with Disabilities, and the 2018 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.



The obligation to fulfil requires the state to adopt appropriate legislative, administrative, judicial, and other measures aimed at achieving full realisation of fundamental freedoms and rights. The state is also obligated to introduce policy, budgets, and laws to protect the marginalised and vulnerable members of society, for instance by ensuring universal health coverage, availability and access to emergency food relief, and creation of public awareness to combat stigma and prejudice against persons with albinism.

This scorecard is an independent civic assessment of the performance of the Jubilee government since 2013 when it assumed power to mid-2022 as it prepares to hand over power to the next government. The scorecard is published by twelve civic organisations that are active in promoting and protecting human rights and social justice.

Specifically, this scorecard measures progress against civic freedoms and space, the right to life, health, adequate housing and food across key vulnerable populations. The incoming national and county administrations will find this scorecard useful in designing a human rights approach to policymaking, budgeting, and programming for the first 180 to 365 days.

1.2: Methodology

Using interviews and a review of desktop literature, this scorecard examined five themes against relevant international and national human rights standards, key Jubilee government commitments, and implementation progress. The scorecard referred to the Universal Declaration of Human Rights, the Constitution of Kenya, Jubilee Manifesto (2013)⁶, Jubilee Manifesto (2017)⁷, the Second Medium-Term Plan (MTP2)⁸, and the Third Medium-Term Plan (MTP3).⁹ The scorecard also reviewed reports from several ministries, the judiciary, national assembly, independent offices and constitutional commissions, as well as commitments made during international and regional policy processes such as the Universal Periodic Review (UPR) Mechanism and the 2030 Agenda for Sustainable Development.

The summary matrix ranks the findings into four. These are: Effective Implementation (Green), Substantial Implementation (Blue), Partial Implementation (Yellow), and Ineffective Implementation (Red). The scorecard offers 26 recommendations against five core human rights areas.

⁶ Jubilee, 'Transforming Kenya: Securing Kenya's Prosperity 2013-2017' (2013).

⁷ Jubilee, 'Continuing Kenya's Transformation, Together: Jubilee's Manifesto 2017' (2017).

⁸ Republic of Kenya, The Second Medium Term Plan (MTP2) (2013-2017) (2013) <https://vision2030.go.ke/2013-2017/>

⁹ Republic of Kenya, the Third Medium Term Plan (MTP3) (2018-2022) (2018) <https://vision2030.go.ke/publication/third-medium-term-plan-2018-2022/>



2.0: Liberty and Security of Person

2.1: Norms and Standards

Article 29 of the CoK guarantees every person the right to freedom and safety. This right includes bodily integrity (freedom from injury to the body) and mental integrity (freedom from injury to the mind). This right also relates to the right to life, freedom from torture and ill-treatment,¹⁰ and arbitrary arrest and confinement.¹¹

2.2: The Jubilee Government Commitments

The Jubilee government did not make express commitments in their 2013 and 2017 political manifestoes to protect people from torture, extrajudicial killings, or enforced disappearances. The government however, made specific commitments in its engagements with international and regional human rights mechanisms.

During its second assessment before the United Nations Human Rights Council under the UPR Mechanism in 2015, the Jubilee government committed that it would thoroughly investigate all extrajudicial killings and educate military and police personnel on human rights principles. The Jubilee government further stated that it would promptly and impartially investigate all allegations of torture and ill-treatment, and strictly hold perpetrators accountable. The same government would also ensure that legislation to counter torture covered all public bodies and included mechanisms for giving reparations to victims.

Noteworthy, the Jubilee government did not elaborate its broad commitments made in MTP2 and MTP3 to protect every person from physical or direct violence (MTP2) and the ‘freedom from fear (a sense of safety and overall wellbeing)’ (MTP3).¹²

Commendably, though, the state is committed to enact legislation on persons deprived of liberty, adopting a comprehensive anti-discrimination law that protects all individuals, irrespective of their sexual orientation or gender identities. The government also aims at eliminating harmful practices against women, including Female Genital Mutilation (FGM). The government also seeks to intensify awareness-raising campaigns about albinism to combat prejudice, stigmatisation, discrimination, and violence against persons with albinism.¹³

¹⁰ Paul M. Taylor, *A Commentary on the International Covenant on Civil and Political Rights* (Cambridge: Cambridge University Press 2020) 241.

¹¹ Human Rights Committee, CCPR/C/GC/35, General Comment No. 35, Article 9 (Liberty and Security of Person) <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC35-Article9LibertyandSecurityofperson.aspx>

¹² MTP3 *supra*.

¹³ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review, Kenya’ A/HRC/29/10 <https://www.ohchr.org/en/hr-bodies/upr/ke-index>



2.3: Status of Implementation

Ending Excessive Force, Enforced Disappearances, and Extrajudicial Killings

In his 2021 State of the Nation address to Parliament, President Uhuru Kenyatta reported that his government had promoted human dignity and human rights by ‘disapprov(ing) the use of excessive force by police officers during the implementation of the nationwide curfew ... (and by issuing) a directive to the National Crime Research Centre to probe and prepare advisories to security agencies on the escalating cases of Gender-Based Violence (GBV), teenage pregnancies and violation of children’s rights.’¹⁴

Despite these and other public statements, however, the use of excessive force, enforced disappearances and extrajudicial killings by the police remained a common practice under the Jubilee government over the past decade. The Independent Policing Oversight Authority (IPOA) analysis finds that serious injuries perpetrated by the police rose between 2012 and 2019. Of the 13,361 cases processed by IPOA, 751 (6%) were complaints of serious injuries. Police actions during the 2017 General Elections and its contested aftermath saw this percentage rise to 61%.¹⁵

Jubilee government state officers responded to insecurity, crime and acts of terrorism by deploying illegal and unlawful measures such as enforced disappearance and extrajudicial killings. Notable among these was the disappearance of at least 34 people in North-Eastern Kenya in 2015. These people had been taken into custody by security forces during counter-terrorism operations targeting the Al-Shabaab terrorist group.¹⁶ Related to this, the Missing Voices Alliance (MVA) reported that 36 persons were forcibly disappeared in 2021.¹⁷

Shockingly, national parks, forests and rivers have become the dumping grounds for over 30 dead people. In January 2022, for instance, Haki Africa and Amnesty International found at least 37 bodies of disappeared persons in River Yala, Siaya County. The state remains silent on the status of investigations and no perpetrators of these serious crimes have been arrested.¹⁸

¹⁴ Republic of Kenya, Eighth State of the Nation Address (Parliament, 30 November 2021) <https://www.president.go.ke/2021/11/30/eighth-state-of-the-nation-address-by-his-excellency-hon-uhuru-kenyatta-cgh-president-of-the-republic-of-kenya-and-commander-in-chief-of-the-defence-forces-at-parliament-buildings-nairobi-kenya-on/>

¹⁵ Independent Policing Civilian Authority, ‘Trends and Patterns of Reported Police Misconducts July 2012-June 2019’ (2021) (on file with authors).

¹⁶ Human Rights Watch, Deaths and Disappearances: Abuses in Counter-Terrorism Operations in Nairobi and in North-Eastern Kenya (2016) <https://www.hrw.org/report/2016/07/21/deaths-and-disappearances/abuses-counterterrorism-operations-nairobi-and>

¹⁷ Missing Voices Alliance, Delayed Justice 2021 Report <https://t.co/HCGJm7KLJG> and Amnesty International, State of the World Report 2021-22 (Amnesty International 2022) <https://www.amnesty.org/en/latest/research/2022/03/annual-report-202122/>

¹⁸ ‘Kenya among top human rights violators in 2021’ The Star <https://www.the-star.co.ke/news/2022-03-30-kenya-among-top-rights-violators-in-2021-amnesty-international/>



Missed Opportunities

A Scorecard on the Jubilee Administration and Lessons for the Next Government - July 2022



instances of police assaulting or shooting civilians allegedly contravening Covid-19 containment measures, or other cases where women and other vulnerable groups in distress died because police officers had barred them from seeking emergency hospital treatment.²³

Between March 2020 and December 2021, IPOA received 96 complaints against police officers arising from 23 deaths and 73 injuries from robbery, physical assault and sexual violence.²⁴ In one of the most brazen incidents, two Embu-based brothers Emmanuel Ndwiga (19) and Benson Ndwiga (22) were beaten to death moments after they were arrested by the police in August 2021.²⁵ Six police officers are on trial in connection with the killings.²⁶ Reviewing the use of unreasonable force by security forces under the State Curfew Order ²⁷, the High Court found the provision unconstitutional and noted that ‘diseases are not contained by visiting violence on members of the public.’²⁸

The killing of hundreds of people remains under-investigated and unpunished despite the Jubilee government’s assertion that it investigates and prosecutes security officers suspected of committing extrajudicial killings. Accordingly, the government instituted the National Police Service Standing Orders (2017) to guide police officers on the proper use of force and firearms and non-deadly force, and further stated that it trains law-enforcement officers on respect for human rights. ²⁹

Even where investigation and prosecution have taken place, court hearings are slow, tedious, and painful for survivors and victims’ families seeking justice. For example, it took six years to conclude the case against police officers accused of the June 2016 abduction, execution and dumping of the bodies of Willie Kimani, a human rights lawyer, his client Josephat Mwenda, and their taxi driver Joseph Muiruri. The accused police had, after their crimes, dumped their victims in the Oldonyo Sabuk River in an attempt to erase proof of their crimes.³⁰

Despite signing International Convention for the Protection of all Persons from Enforced Disappearance in 2007, and being urged repeatedly by local and international human rights actors, Kenya is yet to become party to the Convention.¹⁹

The introduction of new Inter-Agency Anti-Terrorism and Terrorism Financing Guidelines in April 2022 signified the possibility of an end to human rights violations. It also opened the door to a new collaborative strategy across state organs within a human rights framework.²⁰ Adopted by twelve state organs including the Central Bank of Kenya and the National Police Service, the guidelines were thrown into a disarray two months later by the Directorate of Criminal Investigations who disowned the guidelines, despite the signing in a public ceremony by the Police Inspector General.²¹

Following the police use of excessive force in the first week of the Covid-19 curfew restrictions, several human rights organisations released various guidelines to be used by the Police Service on human rights policing during a pandemic.²² In spite of the provisions in these guidelines, state human rights bodies continue to document multiple credible instances of arbitrary and violent Covid-19 curfew enforcement by the police. The KNCHR documented

¹⁹ International Convention for the Protection of all Persons from Enforced Disappearance (United Nations 2005)

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

²⁰ Amnesty International Kenya <https://www.amnestykenya.org/terror-guidelines-will-help-state-deal-better-with-menace/>

²¹ Amnesty International Kenya <https://www.amnestykenya.org/dcis-position-on-prosecution-undermines-the-2010-constitution/>

²² Amnesty International Kenya <https://www.amnestykenya.org/human-rights-based-covid-19-policing-guidelines-for-the-nps/>

²³ Kenya National Commission on Human Rights, ‘Additional Report to the United Nations Human Rights Committee on the Implementation of the Provisions of the International Covenant on Civil and Political Rights 4th Periodic Report’ (January 2021) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=INT%2fCCPR%2fNHS%2fKEN%2f44418&Lang=en

²⁴ Independent Policing Oversight Authority, Budget Policy Statement for the financial Year 2022/2023, presented to the National Assembly’s Departmental Committee on Administration and National Security on Thursday 3rd February 2022.



Preventing Torture and Inhumane Treatment

Between 2014 and 2021, the Independent Medico-Legal Unit (IMLU) documented 650 cases of torture. IMLU processed 210 cases of alleged torture, enforced disappearance, and extrajudicial killings in 2021 alone, an increase of 54% from 2020.³¹ Accordingly, officers from Kenya Police Service, followed by Kenya Forests Service, Kenya Wildlife Service, the Special Crimes Prevention Service, Kenya Prisons, county inspectorate, Kenya Defence Forces, chiefs and assistant chiefs, are responsible for nearly 100 incidents every year.³²

Torture is costly to the taxpayer. According to the KNCHR, courts in Kenya have awarded over KShs. 372 million (about 3.7 million Dollars at current conversion rates) to torture victims in 126 cases determined against government. However, the government had been slow in paying out compensation that courts award to victims of torture by government agencies. Furthermore, victims of torture had not benefited from other necessary reparative measures, including restitution, rehabilitation, satisfaction, and guarantees of non-repetition.³³ At the same time, the KNCHR does not have adequate support to undertake its mandate of investigating and monitoring torture.

On a positive note, the Jubilee government enacted the Prevention of Torture Act (2017), which gives effect to Articles 25 (a) and 29 (d) of the CoK³⁴. The Act defines torture as per Article 1 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), to which Kenya is a party. The Act also creates the offences of torture and ill-treatment. However, the Act has not been institutionalised.

The positive strides notwithstanding, the Office of the Attorney General has also not operationalised the National Coroners Service Act (2017) by establishing the National Coroners Service.³⁵ Implementing the National Coroners Service Act would complement the Prevention of Torture Act by introducing an independent forensic science capacity to determine the identities of deceased persons and the time, manner, and cause of death.³⁶

Again, despite the enactment of the Victim Protection Act, the Office of the Attorney General has still not operationalised the Victim Protection Trust Fund to provide redress to victims of torture and other violations.³⁷ The Office of Attorney General has also neglected to take steps to become a party to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2002). Without this, the state is not able to introduce a more specialised mechanism to protect Kenyans against torture in places of detention.

²⁵ The Standard, Embu brothers were killed on first day of new business <https://www.standardmedia.co.ke/amp/central/article/2001420473/embu-brothers-were-killed-on-first-day-of-new-business>

²⁶ The Standard, Six officers linked to deaths of Embu brothers held for 14 days <https://www.standardmedia.co.ke/amp/central/article/2001421105/six-officers-linked-to-deaths-of-embu-brothers-held-for-14-days>

²⁷ Public Order (State Curfew) Order (2020) http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN36_2020.pdf

²⁸ *Law Society of Kenya v Hillary Mutyambai Inspector General National Police Service & 4 others* [2020] eKLR <http://kenyalaw.org/caselaw/cases/view/193192/>

²⁹ Republic of Kenya, Fourth Periodic Report Submitted by Kenya under Article 40 of the Covenant Due in 2015 (2018) para. 65 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKEN%2f4&Lang=en

³⁰ The Star, Willie Kimani case status report <https://www.the-star.co.ke/news/2020-02-23-willie-kimani-case-status-report/>

³¹ Independent Medico-Legal Unit, 2021 State of the Nation (2022).



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Despite these glaring gaps, the introduction of a rapid response guide and a specimen charge sheet under the Prevention of Torture Act by the Office of the Director of Public Prosecutions in 2021 offers a glimmer of hope that the post-Jubilee administration may do better to ensure justice and accountability for victims of torture.³⁸

³² Independent Medico-Legal Unit, Joint Civil Society Organisations (CSO) Shadow Report in Response to the Third Periodic Report by Kenya to the Committee against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2013-2022).

³³ Kenya National Commission on Human Rights, *Footprints of Impunity: Counting the Cost of Human Rights Violations (2016)* <https://www.knchr.org/Portals/0/CivilAndPoliticalReports/FOOTPRINTS%20OF%20IMPUNITY-B5-F-T-24-7-2017.pdf?ver=2017-07-27-105838-067>

³⁴ Prevention of Torture Act (Cap. 65C) <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2065C>

³⁵ National Coroners Service Act (No. 18 of 2017) <http://www.kenyalaw.org/lex/actview.xql?actid=No.%2018%20of%202017>

³⁶ Supra Missing Voices Alliance, Delayed Justice 2021 Report

³⁷ Victim Protection Act (No. 17 of 2014) <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2017%20of%202014>

³⁸ <https://www.ohchr.org/en/press-releases/2022/05/experts-committee-against-torture-commend-kenyas-efforts-implement-law>

Ending Deprivation of Liberty for Persons with Disabilities

Since the enactment of the Persons Deprived of Liberty Act³⁹ in 2014, the Jubilee administration committed under the UPR process in 2015 to enact legislation covering the condition of persons deprived of liberty.⁴⁰ Despite this, the criminal justice system discriminates against several vulnerable populations, including people with disability.

Sections 166 and 167 of the Criminal Procedure Code permit detention of persons with psychosocial and intellectual disability (commonly referred to as mental disability) for indeterminate periods and without due process. As per Kenya's laws, detention of such people in a mental hospital, prison, or other institution is at the pleasure of the president.

The Jubilee government has not taken effective steps to repeal the offending provisions, despite several court orders to do so. Courts have established that these provisions are unconstitutional and their continued application amounts to inhuman and degrading punishment, as well as violations of the right to a fair hearing.

⁴¹

Ending Violence against Women

In the UPR process in 2015, Kenya committed to take measures to protect specific population groups against routine violations of their rights. The measures include protection of women and other vulnerable groups against violence and harmful cultural practices. The commitment also securing the interests of persons discriminated against because of their sexual orientation or gender identities. Despite those commitments, violence against such vulnerable groups, especially women, was rife in public and private spaces.

However, the Jubilee government is commended for enacting laws to address Sexual and Gender-Based Violence (SGBV) as well as introducing POLICARE and a trafficking persons crime desk within the Directorate of Criminal Investigations under the National Police Service. Key women's rights groups have nonetheless noted that these instruments have not been used effectively to stem such violence.⁴² The Protection against Domestic Violence Act, for example, has not been fully operationalised to provide victims with medical and psycho-social services, safe shelters, and gender violence recovery centers. Neither have there been mechanisms to ensure that there is effective training of law enforcement officers to investigate and prosecute SGBV cases.⁴³



Without this investment, many women and girls were exposed to SGBV during the 2017 General Elections and the Covid-19 pandemic public health emergencies.⁴⁴

The Jubilee government's launch of the National Policy for the Eradication of Female Genital Mutilation⁴⁵ and the Presidential Declaration to End Female Genital Mutilation by 2022 were important moments of the Uhuru Kenyatta leadership.⁴⁶ Another win was in March 2021 when the High Court dismissed a petition that sought to declare the Prohibition of Female Genital Mutilation Act⁴⁷ unconstitutional.⁴⁸ Despite these wins, FGM remains endemic in communities such as the Gusii, Somali, and Maasai that have an FGM prevalence of 96%, 94%, and 73%, respectively.⁴⁹



Rights of Non-binary Persons and Sexual Minorities

Lesbian, Gay, Bi-sexual, Transgender, and Queer Kenyans continue to remain unprotected from stigma, discrimination and violence despite the protection of constitutional articles on equality and freedom from discrimination (A27) and safety (28).⁵⁰ Only 14% are comfortable living next to people who were gay or lesbian. LGBTIQ Kenyans currently face three times more abuse and violence than heterosexual women and men. Eighty-nine percent of LGBTIQ Kenyans who have openly expressed their sexuality have experienced being disowned at home, ostracised and/or fired from their workplace and ridiculed by their communities.⁵¹

Discrimination and violence against persons from the LGBTIQ+ community continued to be legalised by a Penal Code that criminalises non-heterosexual conduct.⁵² The High Court has struck down petitions seeking to de-criminalise gay sex.⁵³

These are not non-issues in our opinion and more effort is required from the next administration to protect all human beings regardless of their sexuality identity or sexual choices.

On a positive note, however, the Court of Appeal ruled that the use of anal examination to collect evidence of homosexual sex (Section 162, Penal Code) violates a constitutional right to human dignity, privacy, and security of person.⁵⁴



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Kenya remains a sanctuary nation for LGBTIQ+ refugees facing persecution within the East African region. The safety of LGBTIQ+ refugees in Kakuma camp remains a deep concern and more action is required to ensure that the law enforcement system investigates and prosecutes all perpetrators of hate-crimes against the late Chriton “Trinidad” Atuhwera and other members of this community.⁵⁵

Furthermore, the official recognition of intersex persons has been internationally acclaimed. The Attorney-General appointed Taskforce on Policy, Legal, Institutional and Administrative Reforms Regarding Intersex Persons in Kenya informed this recognition. The taskforce found that restricting health, education, employment, civil registration, and justice services to the binary concept of only male and female undermined the rights of intersex persons. All these developments led to the very first Kenya Population and Housing Census collecting data on intersex persons in 2019.

Despite all these developments, however, there is need for the incoming county and national governments to take particular action within set timelines in order to secure the progress made in securing the rights and freedoms of the vulnerable members of the Kenyan society. This scorecard identifies some of those measures, as summarised in the table below.

³⁹ Persons Deprived of Liberty Act (No. 23 of 2014) <http://www.kenyalaw.org/lex/actview.xql?actid=No.%2023%20of%202014>

⁴⁰ *ibid* Section 2.

⁴¹ Lawrence Murugu Mute, From Affirmation to Practice: Assessing a Decade of Implementing the Constitution of Kenya 2010 for Persons with Disabilities (United Disabled Persons of Kenya 2021) <https://www.udpkenya.or.ke/wp-content/uploads/2021/03/Assessing-A-Decade-of-Implementing-the-Constitution-for-PWDs-in-Kenya.pdf> Also Kimaru & 17 others v Attorney General & another; Kenya National Human Rights and Equality Commission (Interested party) [2022] KEHC 114 (KLR) (Constitutional and Human Rights) <http://kenyalaw.org/caselaw/cases/view/227655/>

⁴² Kenya Joint Stakeholders, ‘Shadow Report on the Initial Report of Kenya’s Implementation of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa’ (2021) (on file with authors).

⁴³ Protection against Domestic Violence Act (No. 2 of 2015) <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=NO.%202%20OF%202015>

⁴⁴ The CREAW and Wangu Kanja Foundation Delayed Access to Justice Report identified a number of challenges and recommendations for women accessing justice following gender based violations. <https://home.creaw.org/portfolio/gaps-and-challenges-within-the-criminal-justice-system-and-access-to-justice-for-survivors-of-sexual-violence/>

⁴⁵ National Policy for the Eradication of Female Genital Mutilation (2019) <https://gender.go.ke/wp-content/uploads/2019/10/NATIONAL-POLICY-FOR-THE-ERADICATION-OF-FEMALE-GENITAL-MUTILATION-.pdf>

⁴⁶ <https://kenya.unfpa.org/en/news/presidential-commitment-end-female-genital-mutilation-2022>

⁴⁷ Prohibition of Female Genital Mutilation Act (No. 32 of 2011) <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2032%20of%202011>

⁴⁸ *Tatu Kamau v Attorney General & 2 others* [2021] eKLR <http://kenyalaw.org/caselaw/cases/view/209223/>

⁴⁹ *Supra* Shadow Report.

⁵⁰ Amnesty International <https://www.amnesty.org/en/latest/news/2013/06/rising-levels-homophobia-sub-saharan-africa-are-dangerous-and-must-be-tackled/>

⁵¹ AfroBarometer https://www.afrobarometer.org/wp-content/uploads/2022/02/ad449-identity_tolerance_and_trust_in_kenya-afrobarometer_dispatch-13may21.pdf

⁵² Section 162 (a) and (c) of the Penal Code (Cap. 63) <http://www.kenyalaw.org/lex/actview.xql?actid=CAP.%2063>

⁵³ *EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae)* (2019) eKLR <http://kenyalaw.org/caselaw/cases/view/173946/>

⁵⁴ *COI & another v Chief Magistrate Ukunda Law Courts & 4 others* [2018] eKLR <http://kenyalaw.org/caselaw/cases/view/171200/>

⁵⁵ Amnesty International Kenya <https://www.amnestykenya.org/protect-the-lives-and-rights-of-lgbtqi-persons-in-kenya/>



Table 7: Extended Recommendations on Rights-Based Actions by Incoming County and National Governments Via the Ministries in Charge of Constitutional Affairs

Action Required		Timelines
1.	Publicly reaffirm all institutions are prohibited from undertaking extrajudicial killings, forced disappearance, torture and ill-treatment and release or charge in a court of law any persons currently in custody.	Within 100 days
2.	Audit and officially 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 and 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, the Evidence Act, and other laws	Within 365 days



3.0: Civic Space and Freedoms

3.1: Norms and Standards

Civic space refers to the platforms where citizens come together to share ideas and interests. Such encounters inspire action that individually and collectively inform policymaking and hold policy-makers accountable for implementation.⁵⁶ Civic space rests on the three pillars, thus: i) freedom of expression, ii) freedom of assembly and, iii), freedom of association.

Article 33 of the CoK guarantees every person the right to freedom of expression and the right to information, artistic creativity, academic freedom, and scientific research. Article 36 of the CoK in turn guarantees every person the right to freedom of association, including the right to form, join or participate in the activities of an association of any kind. The CoK also guarantees every person the right to assemble, demonstrate, picket, and present petitions to public authorities.⁵⁷

3.2: The Jubilee Government Commitments

During its interaction with the UN Human Rights Council under the 2015 UPR Mechanism, the Jubilee government committed to ensure respect for rights to freedom of expression, association, and peaceful assembly for all citizens, journalists and human rights defenders.

The Jubilee government also committed to enact the Data Protection Bill in line with international standards on the right to privacy; embark on comprehensive legislation that enables measures to investigate all complaints of alleged violations of these freedoms; create an enabling environment for human rights defenders; and swiftly implement the Public Benefits Organisations Act.⁵⁸



3.3: Status of Implementation

Freedom of Expression

Under the National Information, Communications and Technology (NICT) Policy, the Jubilee government has committed to promote the use of social media in exercising the freedom of expression.⁵⁹ Despite this policy, the Directorate of Criminal Investigations (DCI) has arbitrarily arrested activists using social media platforms to raise concerns about corruption in governance. The DCI relies on some constraining legislation, especially the Computer Misuse and Cybercrimes Act⁶⁰, to crack down on online dissent.⁶¹ Bloggers and social media activists were also arrested under the Act for allegedly publishing false information about the CovidD-19 pandemic.⁶² And yet, the courts have repeatedly declared as unconstitutional Jubilee government agents' over-reliance on sections of the Kenya Information and Communications Act (KICA) and the Penal Code to curtail the freedom of expression.

Section 29 of KICA⁶³ criminalises offensive and false communication,⁶⁴ while Section 84(d) criminalises publishing of obscene information in digital forms.⁶⁵ Elsewhere, Section 66 of the Penal Code criminalises alarming publications;⁶⁶ Section 132 criminalises speech undermining the authority of a public officer;⁶⁷ while Section 194⁶⁸ criminalises defamation.⁶⁹ By invoking these repressive laws, the Jubilee administration undermined the freedom of expression and the right to dissent offline and online.

Media Freedom

The NICT Policy states that the main objective of granting licenses for private broadcasting services is to develop an environment for enabling broadcasting services in public interest, and to contribute to socioeconomic and cultural development. In this regard, the Communications Authority of Kenya issued 71 broadcasting licenses in the 2018/2019 financial year, up from 55 and 54 licenses in the 2017/2018 and 2016/2017, respectively.⁷⁰ The growth in licensing broadcasting outlets has contributed to media diversity and pluralism.

⁵⁶ <https://civicspacewatch.eu/what-is-civic-space/>

⁵⁷ Ibid Article 37.

⁵⁸ Supra Human Rights Council, Report of the Working Group on the Universal Periodic Review- Kenya, UN Doc A/HRC/29/10 (26 March 2015). <https://www.ohchr.org/en/HRBodies/UPR/Pages/KEindex.aspx>

⁵⁹ National Information, Communications and Technology Policy (2019) <https://www.ict.go.ke/wp-content/uploads/2019/12/NATIONAL-ICT-POLICY-2019.pdf>

⁶⁰ Computer Misuse and Cybercrimes Act (No. 5 of 2018) <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%205%20of%202018>

⁶¹ Article 19 Eastern Africa, Release and cease attacks on Edwin Mutemi wa Kiama <https://www.article19.org/resources/kenya-cease-attacks-on-and-release-edwin-mutemi-wa-kiama/>

⁶² CIPESA, The Erosion of Digital Rights in the Fight Against Covid-19 in Kenya (September 2020) <https://cipesa.org/2020/09/the-erosion-of-digital-rights-in-the-fight-against-covid-19-in-kenya/>

⁶³ Kenya Information and Communication Act (No 2 of 1998) <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%202%20of%201998>

⁶⁴ Geoffrey Andare v Attorney General & 2 Others [2016] eKLR <http://kenyalaw.org/caselaw/cases/view/121033/>

⁶⁵ Cyprian Andama v Director of Public Prosecution & Another; Article 19 East Africa (Interested Party) [2019] eKLR <http://kenyalaw.org/caselaw/cases/view/179722/>

⁶⁶ Cyprian Andama v Director of Public Prosecutions & 2 Others; Article 19 East Africa (Interested Party) [2021] eKLR <http://kenyalaw.org/caselaw/cases/view/212397/>

⁶⁷ Robert Alai v The Attorney General & Another [2017] eKLR <http://kenyalaw.org/caselaw/cases/view/135467/>

⁶⁸ Penal Code (Cap 63) <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2063>

⁶⁹ Jacqueline Okuta & Another v Attorney General & 2 Others [2017] eKLR <http://kenyalaw.org/caselaw/cases/view/130781/>

⁷⁰ Communication Authority, 2018/2019 Annual Report at 59. <https://www.ca.go.ke/wp-content/uploads/2020/12/Annual-Report-for-Financial-Year-2018-2019.pdf>



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The Jubilee government also passed the Media Council Act, creating the Media Council of Kenya (MCK). Accordingly, the MCK was meant to set media standards and ensure compliance as envisaged in Article 34 of the CoK.⁷¹ The Act also established the Media Complaints Commission to manage complaints against media.

Relative to other countries, Kenya has jumped 33 positions to 69 out of 180 in the 2022 World Press Freedom Index, with a global score of 64.59 against 2021 rankings⁷² The MCK has cited a pattern of attacks on the media practitioners by security officers, threats and intimidation from politicians and their supporters, and the harassment of journalists or confiscation and destruction of their equipment by law enforcement officers.⁷³

At the same time, many attacks on media practitioners and journalists, have not led to convictions... For instance, investigations into the killing of one journalist in 2015 remain incomplete.⁷⁴ Furthermore, 94 violations against journalists and media workers were recorded between the prolonged electoral season of May 2017 to April 2018.⁷⁵ Between March and August 2020, some 34 male and 14 female media workers suffered physical assaults, arrests, telephone or verbal threats, online harassment, and denied access to public information, officials, and buildings.⁷⁶

In a significant departure from the entire period, the Jubilee government demonstrated intolerance of media freedom in the aftermath of the 2017 General Elections. In the guise of maintaining law and order, the Communications Authority of Kenya (CA) effected broadcast bans on Citizen TV, Inooro TV, NTV, KTN News, and several radio stations for defying gag orders on providing coverage of Raila Odinga's swearing-in as 'the people's president' on 30th January 2018.⁷⁷

Another impediment relates to a disturbing trend where courts award excessive amounts of compensation for defamation cases, often involving leading media houses, subsequently undermining freedom of the media.

⁷⁸

For instance, the 2021 judgment against a local newspaper awarded two plaintiffs KShs 22 million (about 220, 000 USD at current conversions) damages.⁷⁹ When courts award such high amounts against media houses, the net effect is to encroach on the freedom of the media. It is also significant that the suits are instituted by public officials and politicians who could be expected to attract higher degrees of public scrutiny.⁸⁰

⁷¹ Media Council Act (No 46 of 2013) <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2046%20of%202013>

⁷² <https://rsf.org/en/index?year=2022>

⁷³ Media Council of Kenya, State of the Media Report (2019)

https://mediacouncil.or.ke/sites/default/files/downloads/MCK_Status_of_the_Media_Survey_2019.pdf

⁷⁴ In April 2015, John Kituyi, editor of the regional Mirror Weekly newspaper, who had been investigating the intimidation of witnesses in the International Criminal Court case against Deputy President William Ruto, was killed, and this case remains unsolved.

Committee to Protect Journalists, John Kituyi killed <https://cpj.org/data/people/john-kituyi/>

⁷⁵ Article 19, Ending impunity for crimes against journalists

<https://www.article19.org/resources/ending-impunity-for-crimes-against-journalists/>

⁷⁶ Article 19, Briefing on attacks against journalists March 2020- July 2021

https://www.article19.org/wp-content/uploads/2021/11/Covid-Response-Africa_Kenya.pdf

⁷⁷ Reporters without Borders, RSF urges Kenya to end broadcast ban on four TV channels

<https://rsf.org/en/news/rsf-urges-kenya-end-broadcast-ban-four-tv-channels>

⁷⁸ ARTICLE 19 Eastern Africa, Kenya: Excessive defamation damages violate the right to media freedom

<https://www.article19.org/resources/kenya-inordinate-damages-violate-media-freedom/#:~:text=Kenya%3A%20Excessive%20defamation%20damages%20violate%20the%20right%20to%20media%20freedom,-Posted%20on%20August&text=ARTICLE%2019%20Eastern%20Africa%20is,High%20Court%20issued%20a%20KES>



Data Protection

Kenya is a data-fied nation and digital democracy. Records show that 25% of Kenyans now use WhatsApp, YouTube, Facebook, Twitter and other digital platforms to capture and express their most personal experiences and images. Notably, current data also records that while there has been an 11% growth in the number of Kenyans using mobile phones and their platforms, most of the new users came from the 18 to 34 year olds. Among them, 81% have connected digital devices to financial institutions while 72% are currently using mobile money services. E-commerce is now a KShs 150 trillion industry that dominated by men, who have three times more access compared to women.⁸¹

The National Information and Communications Technology Policy is therefore important in securing the right of Kenyans to the privacy of their data. The policy stipulates that citizens may request and should promptly receive data held on them by any public or private entity, and that they could dispose of, use and store that data as they see fit.

During the 2017 General Elections, the Jubilee party engaged the now-defunct Cambridge Analytica, a United Kingdom-based political consultancy, to run their electoral campaigns.⁸² Cambridge Analytica is known to have used data harvested illegally and without the consent of more than 50 million Facebook users, some of them Kenyans.⁸³

The year 2019 saw accelerated attempts to introduce mass surveillance policies and laws, including the collection of over 80 points of data through the Huduma Namba programme and the national census. Over the last three years, there have been large data breaches by state agencies entrusted with this data.

<https://www.article19.org/resources/kenya-inordinate-damages-violate-media-freedom/#:~:text=Kenya%3A%20Excessive%20defamation%20damages%20violate%20the%20right%20to%20media%20freedom,-Posted%20on%20August&text=ARTICLE%2019%20Eastern%20Africa%20is,High%20Court%20issued%20a%20KES.>

⁷⁹ Ernest Omondi Owino & Another v Felix Olick & 2 Others [2021] eKLR <http://kenyalaw.org/caselaw/cases/view/216833>

⁸⁰ The Star (Linda Musita), The Elusive fair hearing <https://www.the-star.co.ke/news/2021-08-02-linda-musita-the-elusive-fair-hearing/>

⁸¹ The Data Portal <https://datareportal.com/reports/digital-2021-kenya>

⁸² Privacy International, Voter profiling in the 2017 Kenyan election <https://medium.com/@privacyint/voter-profiling-in-the-2017-kenyan-election-8d9ac1e52877>

⁸³ Aljazeera, Facebook's Zuckerberg sorry for 'major breach of trust' <https://www.aljazeera.com/news/2018/3/22/facebook-zuckerberg-sorry-for-major-breach-of-trust>



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In March 2019, the Jubilee government introduced the National Integrated Identity Management System (NIIMS) to initiate a nationwide exercise to collect personal and biometric data for a central master population database. Petitioned by human rights organisations, the High Court found that the collection of DNA and GPS coordinates was intrusive, unnecessary and a violation of Article 31 of CoK on the right to privacy. The court also nullified Sections 5(1)(g) and 5(1)(ha) of the Registration of Persons Act which required the collection of GPS coordinates and DNA for violating the right to privacy.⁸⁴

In November 2020, the Jubilee government rolled out its program of issuing Huduma Namba and Huduma Cards in disregard of the Data Protection Act. The Act requires a data controller or processor to conduct a data protection impact assessment, where a processing operation is likely to result in a high risk to the rights and freedoms of a data subject owing to the nature, scope, context, and purposes.⁸⁵ The High Court quashed the decision to roll out Huduma Cards and ordered the government to conduct a data protection impact assessment in compliance with Section 31 of the Data Protection Act.⁸⁶

In May 2021, the Kenya Revenue Authority (KRA) publicly listed the names and personal identification numbers of 62,727 taxpayers without their informed and prior consent for allegedly failing to file tax returns and threatened them with deregistration.⁸⁷

Two months later, in June 2021, many Kenyans discovered that they had been registered as members of political parties without their knowledge or consent. Over two hundred persons complained to the Data Protection Commissioner. After engaging with the Office of the Registrar of Political Parties (ORPP), political parties, and other data controllers and processors, the affected people were provided with a way to check and change their registration status.⁸⁸ However, the Data Protection Commissioner did not take any action against political parties that had illegally gathered and misrepresented personal information. Furthermore, the Data Protection Commissioner has not taken action against companies that conduct unsolicited SMSs marketing goods, services, or political campaign messaging.⁸⁹

⁸⁴ Nubian Rights Forum & 2 Others v Attorney General & 6 Others; Child Welfare Society & 9 Others (Interested Parties) [2020] eKLR <http://kenyalaw.org/caselaw/cases/view/189189/>

⁸⁵ Section 31, Data Protection Act, 2019.

⁸⁶ Republic v Joe Mucheru, Cabinet Secretary Ministry of Information Communication and Technology & 2 others; Institute & another (Exparte); Immaculate Kasait, Data Commissioner (Interested party) (Judicial Review Application E1138 of 2020) [2021] KEHC 122 (KLR) (Judicial Review) (14 October 2021) (Judgment) <http://kenyalaw.org/caselaw/cases/view/220495/>

⁸⁷ Amnesty International, KRA Data leaks <https://www.amnestykenya.org/kra-data-leaks/>

⁸⁸ Office of the Data Protection Commissioner, Statement on alleged use of personal data in registration to political parties without consent (25 June 2021) https://twitter.com/ODPC_KE/status/1408353948239597570

⁸⁹ Mugambi Laibuta, Data brokers and direct marketing <https://www.laibuta.com/data-protection/data-brokers-and-direct-marketing/>



In December 2021, the Jubilee government introduced the Huduma Bill to establish NIIMS, issue legal identity documents and overhaul the entire civil registration system.⁹⁰ Several business companies, human rights organisations and government departments expressed concerns with loopholes that could enable mass surveillance, breaches of the right to privacy, risks of excluding those without identification documents, and the absence of comprehensive civic education and public participation.⁹¹ The bill failed to pass by the end of the twelfth National Assembly and lapsed. The thirteenth National Assembly must amend the weaknesses in the bill before it is reintroduced.

The enactment of the Data Protection Act in November 2019 and the subsequent establishment of the Office of the Data Protection Commissioner fulfilled the government's commitment under MTP3.⁹²

Two years on, however, it is worrisome that 67% and 82% of Kenyans remain unaware of the Act and the responsibility of the DPC's Office.⁹³ According to Datareportal, an encouraging development is that 31% of Kenyans are now worried about how their data is used, while 75% want action on fake news.⁹⁴

Freedom of Association

During the second cycle of UPR in 2015, the Jubilee government pledged to operationalise the Public Benefits Organisations Act,⁹⁵ and safeguard the rights and space for civil society in line with the CoK.⁹⁶ The government further pledged that any amendments to the Act would be undertaken in consultation with civil society.⁹⁷

During the third cycle in 2020, the government explained to peer governments at the UPR Working Group that the delay in operationalising the Act required the introduction of adequate infrastructure.⁹⁸ Kenya again is yet to enable the full operationalisation of the Public Benefits Organisation Act.⁹⁹ Despite these multiple commitments, the Jubilee government has still not gazetted the commencement date of the Act. The nation's 8,000 NGOs are still governed by a one-party statute enacted over 30 years ago.

⁹⁰ Parliament of Kenya, Huduma Bill, 2021 <http://www.parliament.go.ke/node/15255>

⁹¹ Coalition of Civil Society Organizations, Memorandum

<https://www.article19.org/resources/kenya-joint-memorandum-asks-for-huduma-bill-to-fully-protect-rights/>

⁹² Data Protection Act (No 204 of 2019) <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2024%20of%202019>

⁹³ Amnesty International Kenya <https://www.amnestykenya.org/kenyans-still-unaware-of-data-protection-and-right-to-privacy/>

⁹⁴ The Data Portal <https://datareportal.com/reports/digital-2021-kenya>

⁹⁵ Public Benefits Organizations (No. 18 of 2013)

<http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2018%20of%202013>

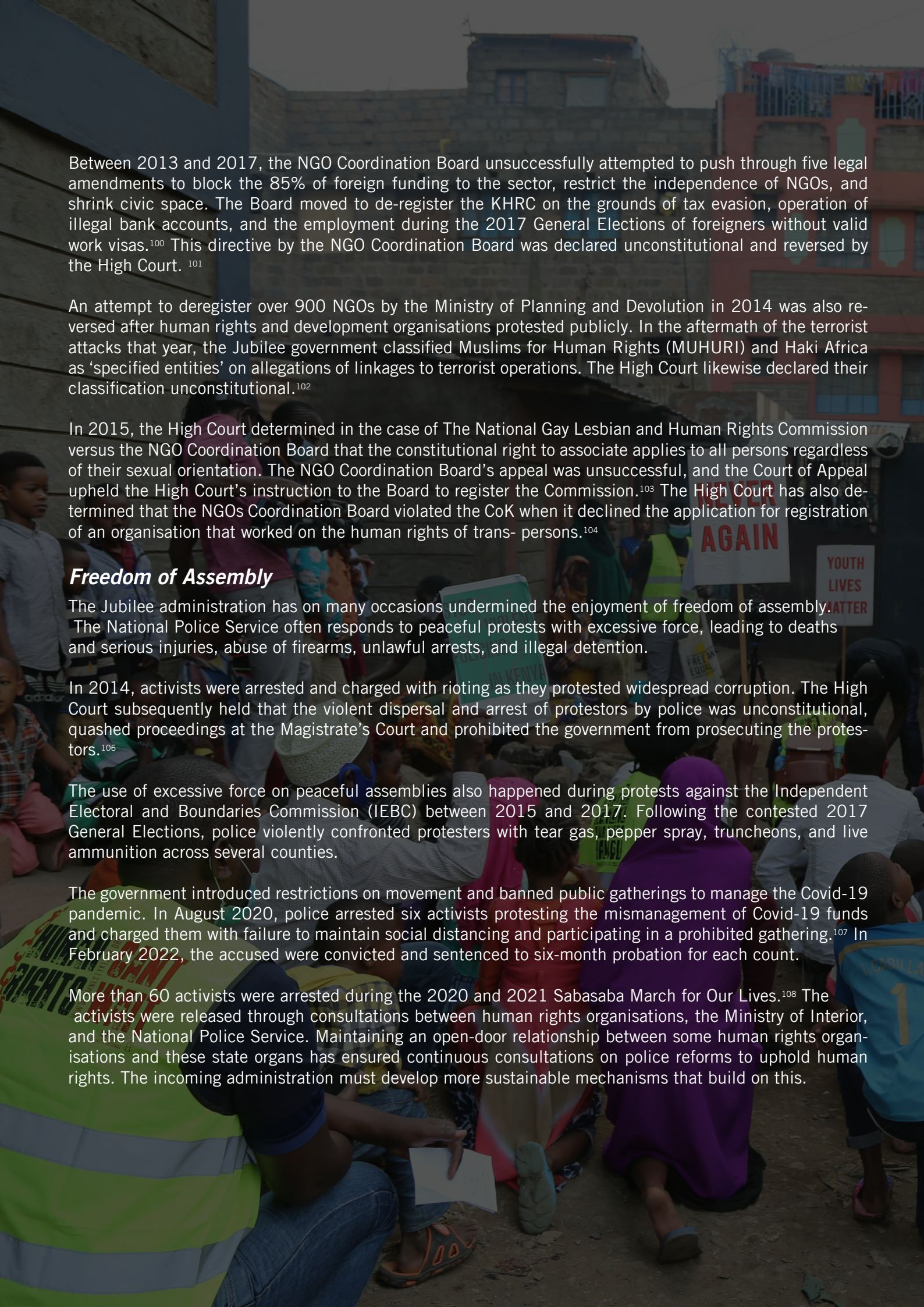
⁹⁶ Supra Report of the Working Group on UPR, para. 142.125

⁹⁷ *ibid*, para 142.128.

⁹⁸ Human Rights Council, Report of the Working Group on the Universal Periodic Review- Kenya,

UN Doc A/HRC/44/9 (20 March 2020) at para 141 <https://www.ohchr.org/en/HRBodies/UPR/Pages/KEindex.aspx>

⁹⁹ *ibid*, para 142.160



Between 2013 and 2017, the NGO Coordination Board unsuccessfully attempted to push through five legal amendments to block the 85% of foreign funding to the sector, restrict the independence of NGOs, and shrink civic space. The Board moved to de-register the KHRC on the grounds of tax evasion, operation of illegal bank accounts, and the employment during the 2017 General Elections of foreigners without valid work visas.¹⁰⁰ This directive by the NGO Coordination Board was declared unconstitutional and reversed by the High Court.¹⁰¹

An attempt to deregister over 900 NGOs by the Ministry of Planning and Devolution in 2014 was also reversed after human rights and development organisations protested publicly. In the aftermath of the terrorist attacks that year, the Jubilee government classified Muslims for Human Rights (MUHURI) and Haki Africa as ‘specified entities’ on allegations of linkages to terrorist operations. The High Court likewise declared their classification unconstitutional.¹⁰²

In 2015, the High Court determined in the case of The National Gay Lesbian and Human Rights Commission versus the NGO Coordination Board that the constitutional right to associate applies to all persons regardless of their sexual orientation. The NGO Coordination Board’s appeal was unsuccessful, and the Court of Appeal upheld the High Court’s instruction to the Board to register the Commission.¹⁰³ The High Court has also determined that the NGOs Coordination Board violated the CoK when it declined the application for registration of an organisation that worked on the human rights of trans- persons.¹⁰⁴

Freedom of Assembly

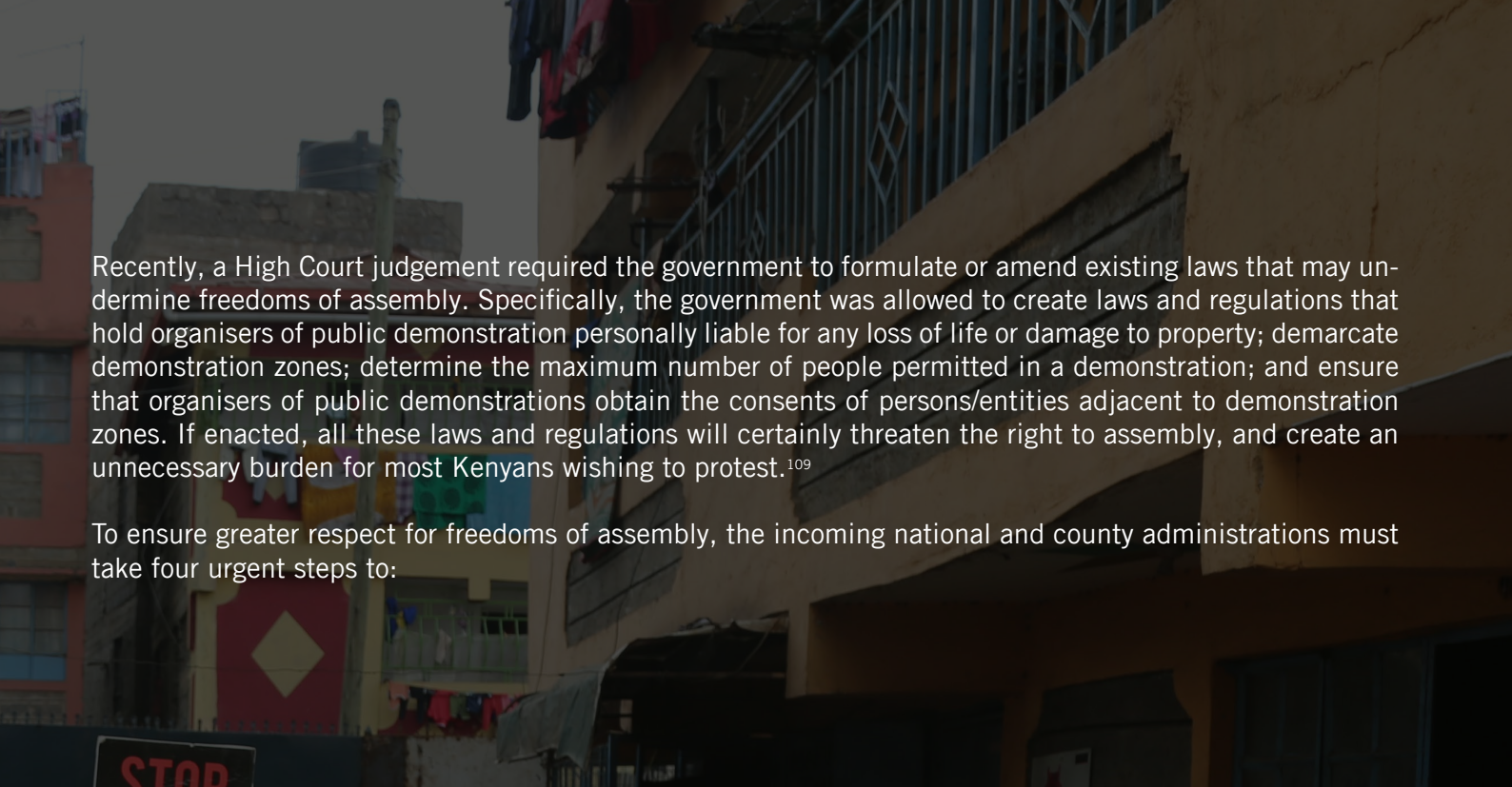
The Jubilee administration has on many occasions undermined the enjoyment of freedom of assembly. The National Police Service often responds to peaceful protests with excessive force, leading to deaths and serious injuries, abuse of firearms, unlawful arrests, and illegal detention.

In 2014, activists were arrested and charged with rioting as they protested widespread corruption. The High Court subsequently held that the violent dispersal and arrest of protestors by police was unconstitutional, quashed proceedings at the Magistrate’s Court and prohibited the government from prosecuting the protestors.¹⁰⁶

The use of excessive force on peaceful assemblies also happened during protests against the Independent Electoral and Boundaries Commission (IEBC) between 2015 and 2017. Following the contested 2017 General Elections, police violently confronted protesters with tear gas, pepper spray, truncheons, and live ammunition across several counties.

The government introduced restrictions on movement and banned public gatherings to manage the Covid-19 pandemic. In August 2020, police arrested six activists protesting the mismanagement of Covid-19 funds and charged them with failure to maintain social distancing and participating in a prohibited gathering.¹⁰⁷ In February 2022, the accused were convicted and sentenced to six-month probation for each count.

More than 60 activists were arrested during the 2020 and 2021 Sabasaba March for Our Lives.¹⁰⁸ The activists were released through consultations between human rights organisations, the Ministry of Interior, and the National Police Service. Maintaining an open-door relationship between some human rights organisations and these state organs has ensured continuous consultations on police reforms to uphold human rights. The incoming administration must develop more sustainable mechanisms that build on this.



Recently, a High Court judgement required the government to formulate or amend existing laws that may undermine freedoms of assembly. Specifically, the government was allowed to create laws and regulations that hold organisers of public demonstration personally liable for any loss of life or damage to property; demarcate demonstration zones; determine the maximum number of people permitted in a demonstration; and ensure that organisers of public demonstrations obtain the consents of persons/entities adjacent to demonstration zones. If enacted, all these laws and regulations will certainly threaten the right to assembly, and create an unnecessary burden for most Kenyans wishing to protest.¹⁰⁹

To ensure greater respect for freedoms of assembly, the incoming national and county administrations must take four urgent steps to:

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- ¹⁰⁰ Civicus, Human right NGOs face closure and possible arrest of their leadership
<https://monitor.civicus.org/updates/2017/08/16/kenya-deregistration-human-rights-CSOs/>
- ¹⁰¹ *Kenya Human Rights Commission & another v Non-Governmental Organizaztions Co-ordination Board & another* [2018] eKLR
<http://kenyalaw.org/caselaw/cases/view/147166/>
- ¹⁰² *Muslims for Human Rights (MUHURI) & another v Inspector-General of Police & 5 others* [2015] eKLR
<http://kenyalaw.org/caselaw/cases/view/116382/>
- ¹⁰³ *Non-Governmental Organizations Co-Ordination Board v EG & 5 Others* [2019] eKLR
<http://kenyalaw.org/caselaw/cases/view/170057/>
- ¹⁰⁴ *Republic v Non-Governmental Organizations Co-ordination Board & Another ex-parte Transgender Education and Advocacy & 3 Others* [2014] eKLR <http://kenyalaw.org/caselaw/cases/view/100341/>
- ¹⁰⁵ *Wilson Olal & 5 Others v Attorney General & 2 Others* [2017] eKLR <http://kenyalaw.org/caselaw/cases/view/137643/>
- ¹⁰⁶ Amnesty International and Human Rights Watch, Kill those criminals! Security forces violations in Kenya's August 2017 elections (2017) https://www.hrw.org/sites/default/files/report_pdf/kenya1017_web.pdf
- ¹⁰⁷ *Muslims for Human Rights, Kenya court sentences anti-corruption activists to six-month probation*
<https://muhuri.org/kenya-court-sentences-anti-corruption-activists-to-six-month-probation/>
- ¹⁰⁸ Capital News, More Than 50 Activists Arrested As Police Break Saba Saba March In Nairobi \ <https://www.capitalfm.co.ke/news/2020/07/more-than-50-activists-arrested-as-police-break-saba-saba-march-in-nairobi/> and The Star, Police disperse Saba Saba protesters in CBD <https://www.the-star.co.ke/news/2021-07-07-photos-police-disperse-saba-saba-protesters-in-cbd/>
- ¹⁰⁹ *Ngunjiri Wambugu v Inspector General of Police, & 2 others* [2019] eKLR <http://kenyalaw.org/caselaw/cases/view/178860/>



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Table 8: Extended Recommendations on the Protection of Individual Freedoms

Action Required		State Organ	Timelines
1.	Publicly re-affirm the right of all Kenyans to express themselves, freely associate and assemble, the safety of journalists and media in doing their work.	Ministry in charge of 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 that monitor civic freedoms and promote citizens' rights, including the KNCHR, ODPP, and the Judiciary.	Ministry in charge of the national treasury	Within 180 days



4.0: Right to the Highest Attainable Standard of Health

4.1: Norms and Standards

Article 43 of the CoK guarantees every person the right to the highest attainable standard of health and reproductive health care. The CoK prohibits the state and any person from discriminating against a person.¹¹⁰ It also affirms that consumers have a right to the protection of their health;¹¹¹ and that children have a right to basic healthcare.¹¹² The CoK obligates state organs to effect affirmative action programmes that ensure minorities and marginalised groups have reasonable access to health services.¹¹³

Finally, the CoK anticipates that the Equalisation Fund may be used to provide health facilities in marginalised areas to improve the quality of health services to the levels generally enjoyed by other parts of the country.¹¹⁴ Realising the right to health requires health services to be available, universally accessible, affordable, culturally acceptable, and scientifically and medically of high quality.¹¹⁵

¹¹⁰ Article 27 (4) of the Constitution *supra*.

¹¹¹ *ibid* Article 46 (1) (c).

¹¹² *ibid* Article 53 (1) (c).

¹¹³ *ibid* Article 56 (e).

¹¹⁴ *ibid* Article 204 (2).

¹¹⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), para 12 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en



4.2: The Jubilee Government Commitments

Health was one of five policy pillars for the Jubilee administration. Under MTP2 and MTP3, and in commitments made under the 2030 Agenda for Sustainable Development, the Jubilee government indicated its commitment to provide all Kenyans with equitable, affordable, accessible, and quality healthcare of the highest standards.¹¹⁶

This included reducing maternal, neonatal, and premature mortality from non-communicable diseases through prevention, treatment, and promotion of mental health and well-being; access to basic and sexual and reproductive healthcare services; and achieving universal health coverage. Under these commitments, families would be protected from the risks of medical-related financial bankruptcies while accessing safe, effective, high quality, and affordable essential medicines and vaccines for all.

4.3: Status of Implementation

Universal Health Coverage

The Universal Health Coverage Pilot Programme was launched on 13th December 2018 in Kisumu, Nyeri, Machakos, and Isiolo counties. The four counties were selected on the prevalence of infectious diseases such as malaria (Kisumu), high rates of road traffic accidents (Machakos), maternal mortality (Isiolo), and high burden of non-communicable diseases (Nyeri).¹¹⁷ Each household would be issued Universal Health Coverage Cards to access free public health services. The national government would then waive all user fees and use conditional grants to reimburse the counties for lost revenue, with support from development partners.¹¹⁸

The pilot programme expanded the right to health to 3.2 million Kenyans, according to the Ministry of Health.¹¹⁹ The need to re-orient health systems towards primary health care, a skilled health workforce and deepening citizens' awareness and ownership were important lessons.¹²⁰

The programme faced many challenges, including corruption, neglect of the health workforce, and irregular disbursements to counties. All these led to patients paying out of pocket for public services, a prolonged 2019 health-worker strike, and delays in accessing healthcare. The programme also suffered from poor public information, with communities being excluded.¹²¹



While President Kenyatta launched the National Universal Health Coverage Programme on 7th February 2022, it is not clear yet what specific measures will be taken to overcome the challenges.¹²²

Health Insurance

The NHIF Act establishes the National Hospital Insurance Fund (NHIF), a state corporation with the core mandate to provide medical insurance cover to all its members and their declared dependents. Health insurance is central to cushioning people from financial hardships and achieving universal health coverage. The Jubilee administration has used contributory health insurance as one of its pre-payment health financing mechanisms for the National Hospital Insurance Fund Act (NHIF).¹²³

Under MTP3, the Jubilee government committed to achieve over 70% health insurance coverage. NHIF membership increased by 71%, from 4.5 million in 2013/14 to 8.5 million in 2018/19 financial years.¹²⁴ Formal and informal sector membership rose by 46% and 178%, respectively.¹²⁵

The Jubilee government has attributed the NHIF's membership increase to aggressive sensitisation, subscription affordability, and ease of payments for persons in the informal sector. The presence of offices at the county and sub-county levels, and the enrolment of persons over 70-year-old under the SupaCover as well as the statutory requirement for all employees to become contributors, also assisted.¹²⁶

Tragically, while enrolment has been significant, limited retention has been a major challenge. Nearly 50% of the 10 million members were inactive and 75% had defaulted by April 2021.¹²⁷ Many low-income families have been unable to sustain NHIF health insurance payments.¹²⁸ Re-engaging the fund has proved even more difficult, as defaulting members were required to pay an entire year's premium (KShs.6,000 or 60 USD) in advance to re-join the Fund.¹²⁹

¹¹⁶ United Nations Department of Economic and Social Affairs, Sustainable Development <https://sdgs.un.org/goals/goal3>

¹¹⁷ Ministry of Health, President Uhuru launches Universal Health Coverage Pilot program (13 December 2018) <https://www.health.go.ke/president-uhuru-launches-universal-health-coverage-pilot-program-nairobi-kenya-december-13-2018/>

¹¹⁸ Mbuthia, Boniface, Ileana Vilcu, Nirmala Ravishankar, and Joanne Ondera. 2019. "Purchasing at the County Level in Kenya." Washington DC: ThinkWell. https://thinkwell.global/wp-content/uploads/2020/02/Kenya-county-purchasing-report-2019_11_01-Final_updated.pdf

¹¹⁹ Ministry of Health, UHC pilot expands health to 3.2m Kenyans <https://www.health.go.ke/uhc-pilot-expands-health-services-to-3-2-kenyans/>

¹²⁰ *ibid.*

¹²¹ People's Health Movement -Kenya, UHC survey dissemination report https://phmovement.org/wp-content/uploads/2020/12/Town-Hall-Dissemination-Report_8_12_2020-1.pdf

¹²² The Presidency, President Kenyatta Launches UHC National Roll Out, <https://www.president.go.ke/2022/02/07/president-kenyatta-launches-uhc-national-roll-out/>

¹²³ National Hospital Insurance Fund Act (No. 9 of 1998) <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%209%20of%201998>

¹²⁴ Republic of Kenya, Universal Health Coverage Report (Health in the SDG Era): Is Kenya on Track Towards Achievement of SDG 3? An analysis of Health Indicators in Kenya at 51 <https://www.planning.go.ke/wp-content/uploads/2022/02/UHC-REPORT-ammended-1.pdf>

¹²⁵ *ibid.*

¹²⁶ *Ibid* at 51-52.

¹²⁷ John Muchangi, "All I Want is to Put a Smile on a Patient's Face – NHIF Boss," The Star, April 15, 2021, <https://www.the-star.co.ke/news/big-read/2021-04-15-all-i-want-is-to-put-a-smile-on-a-patients-face-nhif-boss/>

¹²⁸ Julie Zollmann and Nirmala Ravishankar, Struggling to thrive: How Kenya's low-income families (try to) pay for healthcare (2016), Financial Sector Deepening (FSD) at 19

¹²⁹ John Muchangi, *supra*.



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Low-income earners have also found that the premiums are not value-for-money, as the cover was often incomplete. It is not clear for many what NHIF cover or exempt during hospital admission and how the stockouts will be managed better in future.¹³⁰

The scheme has been undermined by at least five processes of corruption and theft. Officers often demand bribes for the issuance of cards, payment certificates or updating records. There are claims that officers and customers conspire to lodge fictitious claims, under-declare premiums, and issue irregular payment certificates. Powerful politicians have also influenced premium exemptions to favour cronies in private businesses. Embezzlement has also taken place through the misuse of fixed assets and movable property, among other ploys.¹³¹

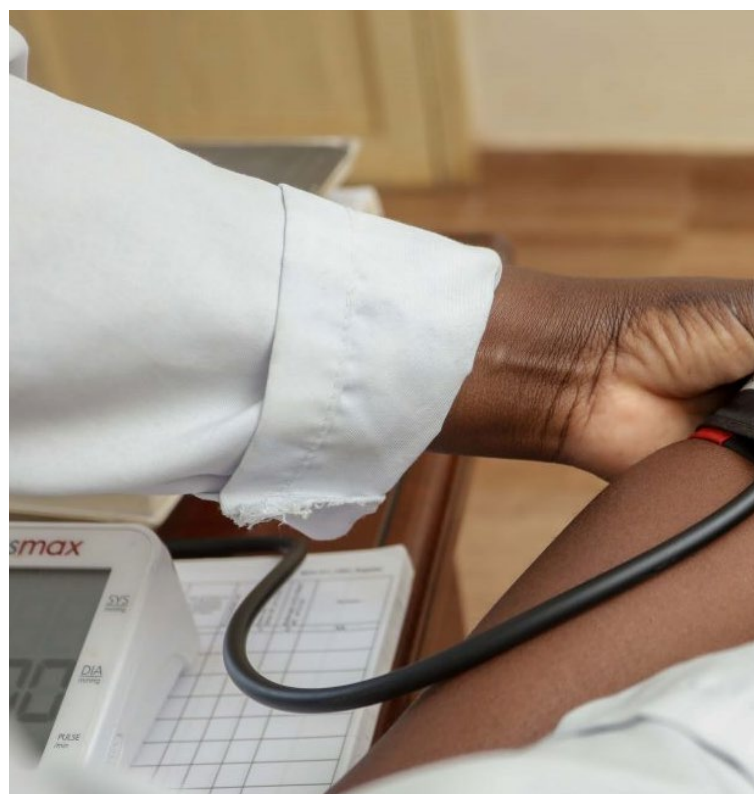
The approach of the Jubilee administration to date has favoured a member subscription model rather than a scheme supported by public taxes. Popular with the World Bank, the subscription model conflicts with the World Health Organisation (WHO) approach as it imposes a financial burden on the poor.¹³² Instead of expanding health coverage for those who need it most, the subscription model tends to enhance the profits of private-sector health service providers.

Primary Healthcare

The WHO defines primary healthcare as a whole-of-society comprehensive life-cycle approach to the right to health,¹³³ Involving the introduction of free health services using the health insurance approach.¹³⁴ Primary healthcare has increased coverage but remains ineffective nationally. Disease treatment programs remain sporadic and there has been insufficient health promotion and disease prevention, leading to the recent declaration to re-orient the health system towards primary healthcare.¹³⁵

Adequate investment in the six levels of the health system has been threatened by expensive specialised projects that prioritised Level 5 and 6 facilities at the expense of Level 1, 2 and 3 options that form the backbone of primary healthcare services.¹³⁶ The Jubilee government's commissioning of the KShs 63 billion (approximately 63 Million USD) Managed Equipment Services (MES) Project in 2015 is a case in point.

Under this project, the Jubilee administration sought to equip two hospitals in each county and four nation-



¹³⁰ Julie Zollmann and Nirmala Ravishankar, *supra*.

¹³¹ Ethics and Anti-Corruption Commission <https://eacc.go.ke/default/insurance-fund-managers-trained-on-anti-corruption-prevention/>

¹³² Adam Wagstaff, "Social Health Insurance Reexamined" (World Bank Policy Research Working Paper 4111, January 2007) <https://openknowledge.worldbank.org/handle/10986/6886>

¹³³ WHO and UNICEF. A vision for primary health care in the 21st century: Towards UHC and the SDGs <https://apps.who.int/iris/handle/10665/328065>

¹³⁴ World Bank Group, Delivering primary health services in devolved health systems of Kenya : challenges and opportunities (English). Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/201501468277739155/Delivering-primary-health-services-in-devolved-health-systems-of-Kenya-challenges-and-opportunities>

¹³⁵ Ministry of Health, UHC pilot expands health to 3.2m Kenyans <https://www.health.go.ke/uhc-pilot-expands-health-services-to-3-2-kenyans/>

¹³⁶ Kenya's health system has six Levels. They include Level 1 (community health units), 2 (dispensaries and clinics), 3 (health centres and maternity and nursing homes), 4 (sub-county hospitals and medium-sized private hospitals/primary hospitals), 5 (county referral hospitals and large private hospitals) and 6 (national referral hospitals and large private teaching hospitals/tertiary referral facilities).



al referral hospitals with specialised state-of-the-art medical equipment outsourced from private contractors. The investment has led to a significant increase access by patients to radiology and other specialised treatment the programme has seen many challenges.

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The 2020 National Senate investigation found that the lack of consultation and agreement with the county governments led to the absence of specialised personnel to oversee the equipment. There was also an insufficient investment for consumables and reagents or infrastructure to house the equipment. Poor transparency in the procurement processes and binding lease agreements without a project sustainability strategy also hampered the success of the handing over of this national project to county governments.¹³⁸

The MES project is a classic example of the Jubilee government's policy to modernise healthcare through privatisation and without public participation.¹³⁹

Instead of expanding primary healthcare, it has ended up encouraging higher-profit curative services, draining public resources away from preventive and promotive care, and into the bank accounts of the private actors.¹⁴⁰ By 2021, it was estimated that KShs.11 billion out of KShs.14 billion NHIF expenditure was channelled to private, for-profit facilities in Nairobi.¹⁴¹

This resource diversion has directly affected Kenya's obligation as a party to the Abuja Declaration.¹⁴²

Under the Abuja Declaration, states committed to allocate 15% of their annual budgets to healthcare. In 2019, the Jubilee government targeted to allocate 12% to its health budget.¹⁴³ Combined budget allocations to health by the national and county governments have grown nearly threefold, between 2013/14 and 2019/20 financial years, from KShs.78 billion (7.8%) to KShs.217 billion (9.1%), or 7.8 to 21.7 USD, respectively.¹⁴⁴

¹³⁷ See the Government response to an earlier draft of this scorecard attached as an appendix.

¹³⁸ Senate Ad-Hoc Committee to Investigate the Managed Equipment Services, Report of the Investigation of the Managed Equipment Services (8 September 2020) https://www.kelinkkenya.org/wp-content/uploads/2020/09/Final-Version-of-MES-Committee-Report-for-Tabling_08092020.pdf

¹³⁹ Monish Patolawala, "Transforming Kenya's Healthcare System: A PPP Success Story," World Bank Blogs, May 24, 2017, <https://blogs.worldbank.org/ppps/transforming-kenya-s-healthcare-system-ppp-success-story>

¹⁴⁰ Centre for Human Rights and Global Justice, Wrong Prescription: The Impact of Privatizing Healthcare in Kenya <https://chrhj.org/kenya-health/> and Health Policy Plus, Kenya Health Financing System Assessment: Time to Pick the Best Path, 2018, 83-84, <http://www.healthpolicyplus.com/pubs.cfm?get=11323>

¹⁴¹ Maureen Kinyanjui, NMS pushes for policy to make NHIF only useable in public hospitals, The Star (September 15 2021).

¹⁴² Abuja Declaration on HIV/AIDS, tuberculosis and other related infectious diseases, 2001, <https://au.int/sites/default/files/pages/32894-file-2001-abuja-declaration.pdf>

¹⁴³ Government of Kenya, Kenya Health Sector Strategic and Investment Plan (KHSSP) 2014-2018.

¹⁴⁴ Hp+ Policy Brief, Is Kenya Allocating Enough Funds for Healthcare? Findings and Recommendations from National and County Budget Analyses (February 2021) http://www.healthpolicyplus.com/ns/pubs/18441-18879_KenyaNCBABrief.pdf

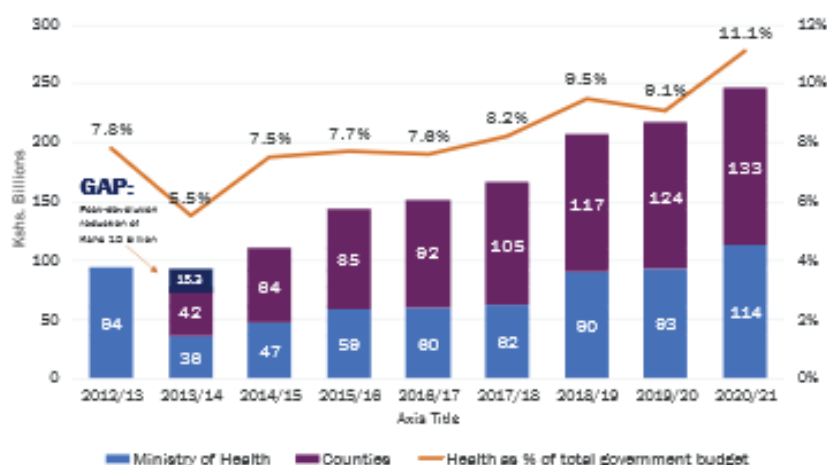


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The Government response to an earlier draft of this scorecard argues that there has been a significant increase in funding to the sector from 7.8 billion to 11.1 billion per annum over the last years. Despite this important policy commitment, the Jubilee administration's health expenditure remains below our international obligation.

Continued Increase in National and County Budget Allocation to Health



Health Worker Density and Distribution

Human resources for health is the cornerstone for the health sector to produce, deliver, and manage services. The WHO defines health workforce as all people engaged in actions whose primary intent is to enhance health.¹⁴⁵ Back in 2014, the Jubilee administration noted that inadequate staffing levels, poor staff skills, low morale, and weak supervision were undermining the quality of public health services, especially in rural health facilities.¹⁴⁶

Subsequently in May 2017, the Jubilee government initiated an exchange program with the Government of Cuba for doctors to fill the staffing gaps in county hospitals.¹⁴⁷ The Kenya Medical Practitioners, Pharmacists, and Dentists Union condemned the Kenya government for employing non-Kenyan health workers and demanded that Kenyan doctors be employed to increase the county health workforce.¹⁴⁸

¹⁴⁵ Everybody's business: strengthening health systems to improve health outcomes – WHO's framework for action. Geneva; World Health Organization, 2007 http://www.who.int/healthsystems/strategy/everybody's_business.pdf

¹⁴⁶ Government of Kenya, Health Sector Human Resources Strategy 2014-2018 <https://www.health.go.ke/wp-content/uploads/2016/04/Kenya-HRH-Strategy-2014-2018.pdf>

¹⁴⁷ Ministry of Health, Kenya and Cuba sign an MOU in health <https://www.health.go.ke/kenya-and-cuba-sign-mou-in-health/>

¹⁴⁸ A.A.COM, Kenya health workers oppose import of Cuban doctors <https://www.aa.com.tr/en/africa/kenya-health-workers-oppose-import-of-cuban-doctors/1918183>



By November 2018, Kenya had 78,711 healthcare workers with 68,085 and 10,626 in the public and private sectors, respectively.¹⁴⁹ Against a population of 47.5 million people, the country had a healthcare worker to population ratio of 13/10,000, way below the WHO recommended ratio of 23/10,000.¹⁵⁰ Besides inadequate workforce, there is inequity in the deployment of health workers. Many specialists are concentrated in major towns and hospitals, while neglecting remote areas where the services of these specialists are sorely needed.¹⁵¹

Access to Sexual and Reproductive Health Care

Through MTP2 and MTP3, the Jubilee government made important commitments to reduce maternal and neonatal mortality. The launch of the 2013 Linda Mama Programme encouraged women to hospitals for delivery of their new-borns. The programme also improved maternal and neonatal health outcomes, as well as service delivery.

The Jubilee government has since reported that the Linda Mama Programme led to a significant increase in expectant mothers accessing maternal and neonatal health services. This subsequently contributed to a notable improvement in maternal and neonatal indicators and reduced maternal and infant deaths.¹⁵²

However, the Linda Mama Programme faced several challenges. For example, insufficient investment in hospital infrastructure and staff did not support the additional number of women seeking maternal healthcare. Levels of awareness remained poor,¹⁵³ and distances to facilities were too far for some mothers. The failure of NHIF to pay for hospitalisation, delays in payments to providers,¹⁵⁴ and the unavailability of essential medicines compelled mothers to pay for what were intended to be free services. Notably, some private hospitals pulled out of the programme.¹⁵⁵

In September 2015, the High Court determined that detention of women who are unable to pay for maternity services in public hospitals is unconstitutional because it violates the mothers' human rights. This ruling opened doors for other public interest suits.¹⁵⁶

¹⁴⁹ Republic of Kenya, Second Voluntary National Review on the Implementation of the Sustainable Development Goals (June 2020) at 44. https://sustainabledevelopment.un.org/content/documents/26359VNR_2020_Kenya_Report.pdf

¹⁵⁰ *ibid.*

¹⁵¹ *ibid.*

¹⁵² Ministry of Health, Linda Mama Programme positioning Kenya on the pathway to UHC, Health PS <https://www.health.go.ke/linda-mama-programme-positioning-kenya-on-the-pathway-to-uhc-health-ps/>

¹⁵³ Orangi Stacey et. Al., Examining the implementation of the Linda Mama free maternity program in Kenya, *International Journal of Health Planning and Management*, 36 (6) (August 2021) at 13.

¹⁵⁴ P4H Social Health Protection Network, Policy versus the ground reality of Kenya's free maternity program <https://p4h.world/en/blog/Policy-versus-the-ground-reality-of-Kenya%E2%80%99s-free-maternity-program>

¹⁵⁵ Kenya National Commission on Human Rights, Implementing Free Maternal Health Care in Kenya: Challenges, Strategies, and Recommendations 6-7 (2013) <http://www.knchr.org/Portals/0/EcosocReports/Implementing%20Free%20Maternal%20Health%20Care%20in%20Kenya.pdf>

¹⁵⁶ *M A & Another v Attorney General & 4 Others* [2016] eKLR <http://kenyalaw.org/caselaw/cases/view/120675>



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Despite this progressive judgment and statements by high-ranking Government officers, mothers continue to be detained as hostages in hospitals until they or their families pay for treatment.¹⁵⁷

Right to Safe Abortion

Article 26(4) of CoK permits abortion if, in the opinion of a trained health professional, there is a need for emergency treatment or the life or health of the mother is in danger. However, lack of standards and guidelines for health care providers on how and when to provide safe abortion care remains a significant barrier to the effective implementation of this constitutional provision that should secure women and girls' access to reproductive health services

Steps towards provision of safe abortion suffered a setback when the Director of Medical Services withdrew both the Standards and Guidelines for Reducing Morbidity and Mortality from Unsafe Abortion in Kenya in 2013, and the National Training Curriculum for the Management of Unintended, Risky, and Unplanned Pregnancies in 2014. The Ministry of Health further banned government healthcare providers from receiving training on the provision of safe abortion care.

The High Court later declared that the Ministry of Health directives in this regard were unconstitutional,¹⁵⁸ although the ministry has not yet disseminated the illegally withdrawn guidelines and the curriculum. These actions have caused more confusion about the legal status of administering abortion safely and the many cases of unsafe abortions.

In 2019, women's rights organisations successfully sought a High Court ruling that pregnancy from rape or defilement which, in the opinion of a trained health professional, posed a danger to the life or the health of the mother, may also be terminated.¹⁵⁹

Devolution of Health

The Jubilee administration has presided over the devolution of most health services from the national government to county governments. Affected are all public health facilities, pharmacies, veterinary services, cemeteries, and solid waste management programmes, among others. Only health policy and national referral health facilities were retained by the national government.

Devolved public health services have suffered from delayed national treasury disbursements, thus affecting the regular payment of salaries and provoking numerous health worker strikes.¹⁶⁰

¹⁵⁷ Maria Cheng, Associated Press (October 25 2018), AP Investigation: Hospital patients held hostage for cash <https://apnews.com/article/health-north-america-india-centers-for-disease-control-and-prevention-ap-top-news-daf47512c8f74e869b722782299b4a0e>

¹⁵⁸ Federation of Women Lawyers (Fida – Kenya) & 3 others v Attorney General & 2 others; East Africa Center for Law & Justice & 6 others (Interested Party) & Women's Link Worldwide & 2 others (Amicus Curiae) [2019] eKLR <http://kenyalaw.org/caselaw/cases/view/175490/>

¹⁵⁹ Federation of Women Lawyers (Fida – Kenya) & 3 others v Attorney General & 2 Others; East Africa Center for Law & Justice & 6 Others (Interested Party) & Women's Link Worldwide & 2 others (Amicus Curiae) [2019] eKLR <http://kenyalaw.org/caselaw/cases/view/175490/>

¹⁶⁰ Kenya Institute for Public Policy Research and Analysis (KIPPRA), Kenya Economic Report 2021: Kenya in COVID-19 Era: Fast-Tracking Recovery at 224. <https://repository.kippira.or.ke/handle/123456789/3522>



Lack of harmonised salaries, terms and conditions of work, complex procedures for inter-county transfers, and difficult working conditions have also contributed to staffing shortages and a drain of skilled and specialised personnel in medical sector.

As intimated earlier in this scorecard, the national government's mobile container clinics is the most glaring symbol of endemic inefficiency and corruption in the health sector. Without consulting county governments, the national government purchased the clinics and distributed them across the 47 counties. Most have been lying in disuse since 2015. In Marsabit, Isiolo, and Garissa counties, the portable clinics are yet to be installed.

In Homa Bay, the staff to run them have not been hired.¹⁶¹ Various state agencies, including the KRA, EACC, and the PAC of the National Assembly continue to investigate the interests behind the procurement of these portable clinics.¹⁶²

Management of the Covid-19 Pandemic

The Covid-19 pandemic exacerbated the strain on an already struggling healthcare system. In all, KShs 3.9 billion (390 Million USD) was allocated in the supplementary budget for the 2019/2020 Financial Year to manage the spread of the pandemic. When the Ministry of Health tabled its report before the Parliamentary Health Committee (PHC) in April 2020, there was public outrage about the failure to transparently breakdown the larger sums involved. This led to a special audit undertaken by the Office of the Auditor-General.¹⁶³

The Auditor-General found that the Kenya Medical Services Authority (KEMSA) direct procured Covid-19-related supplies and services without undertaking market surveys to inform price negotiations, contrary to the Public Procurement and Asset Disposal Act (PPADA).¹⁶⁴ The Auditor General's report further found that supplies worth KShs 8,388,872,706 (over 800 Million USD) were procured illegally without approved budgets, contrary to the provisions of PPADA. Evidence of financial malfeasance pointed at overpriced goods and the awarding of tenders to inexperienced companies that lacked the technical capacity to supply medical commodities. The Auditor General's findings were confirmed by the Public Investments Committee (PIC) of the National Assembly.¹⁶⁵

¹⁶¹ Angela Oketch, 'Queries as MPs End Probe into Sh1bn Clinics' Nation, Sunday 29 May 2022 <https://nation.africa/kenya/news/queries-as-mps-end-probe-into-sh1bn-mobile-clinics-3830748>

¹⁶² Ibid.

¹⁶³ Office of the Auditor General, Special Report on the utilization of COVID-19 fund by the Kenya Medical Supplies Authority (KEMSA) for the period 13 March to 31 July 2020 (September 2020). <https://www.oagkenya.go.ke/wp-content/uploads/2021/09/UTILIZATION-OF-COVID-19-FUNDS-BY-KEMSA-2020.pdf>

¹⁶⁴ Public Procurement and Asset Disposal Act (No. 33 of 2015) <http://kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=No.%2033%20of%202015>

¹⁶⁵ The Public Investments Committee, The Report on Consideration of the Special Audit Report on the Utilization of COVID-19 Funds by the Kenya Medical Supplies Authority, (22 September 2021). <http://www.parliament.go.ke/sites/default/files/2021-09/PIC%20report%20on%20utilization%20of%20covid%2019%20fund.pdf>



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While health workers treated patients without personal protective equipment (PPE), a second scandal revealed that PPE donated to the government through KEMSA had been allegedly stolen. Without masks and PPE, infections among frontline health staff started rising. By December 2020, hundreds of health workers had been infected by Covid-19 and at least 30 were reported to have died of Covid-19. It is bizarre that at such a time, front-line medical staff were forced to buy their PPE and when infected with Covid-19, had to cover their treatment costs.¹⁶⁶

The early mandatory quarantine programme was fraught with policy and procedural confusion. Kenyans complained about the lack of testing, counselling, and information services. Water, accommodation and sanitation services were weak, and many detainees suffered the indignity of having to pay exorbitant costs for a compulsory quarantine programme.¹⁶⁷

Ineffective coordination between the county and national governments over the procurement of equipment and medical supplies also undermined efforts to manage Covid-19. The Council of Governors (CoG) cited inflexible government procurement procedures as an obstacle in effectively combating Covid-19.¹⁶⁸

The implementation of **“spread out, wash and mask up”** protocols, restrictions on movement within and beyond the country also contributed to the containment of the pandemic. The daily briefings and investment by county governments in improving bed capacity and employing health workers also helped.

In August 2020, 30% of Kenyans thought the Ministry of Health had handled the Covid-19 briefings very well; 55% felt Kenya had handled the Covid-19 pandemic either ‘well’ or ‘extremely well’, compared to the rest of East Africa and Africa.

However, a whole 60% cited police brutality as the most common human rights violation followed by forced mandatory quarantine (17%), gender-based violence (15%) and the right to work (14%)¹⁶⁹ during the peak of Covid-19 containment measures.

Despite the inadequacy of vaccines, the government did not initially allocate sufficient resources for vaccinations in the 2021-2022 financial year budget.¹⁷⁰

¹⁶⁶ Reuters, Kenyan doctors go on strike protesting inadequate benefits, PPE <https://www.reuters.com/article/health-coronavirus-kenya-strike-idUSL8N2J10N1>

¹⁶⁷ Amnesty International Kenya <https://www.amnestykenya.org/quarantine-punishment-or-public-health-measure/>

¹⁶⁸ Kenya National Commission on Human Rights, Unmasking the State of Human Rights in Kenya in Containment of the Covid-19 Pandemic (2020) https://www.knchr.org/Portals/0/Reports/KNCHR-Pain-and-Pandemic_Final%20Report.pdf?ver=2020-12-10-091017-467

¹⁶⁹ Amnesty International Kenya – National opinion Poll on the management of the pandemic, August 2020

¹⁷⁰ Amnesty International Report 2021/2022 ‘The state of the world’s human rights’ at 222. <https://amnesty.ca/reports/the-state-of-the-worlds-human-rights/#:~:text=Amnesty%20International’s%20annual%20report%20on,vaccine%20hoarding%20and%20corporate%20greed.>



Let down by vaccine hoarding by developed countries and an inadequate global COVAX facility, it was not until August 2021 that the Jubilee administration successfully procured enough vaccines for a significant number of its people. In October 2021, the Jubilee government abandoned a public education approach to encourage persons to consent to vaccinate themselves.

On 21st November 2021, the Ministry of Health directed that all persons seeking government services in person should be fully vaccinated. The ministry also required all drivers, conductors, *boda boda* [pillion and pedal cycle] riders, pilots, and air hostesses to be fully vaccinated. The directive extended to all persons visiting public places, such as national parks, game reserves, hotels, bars, restaurants, and businesses including small and medium enterprises. But following an outcry by human rights organisations and the public, the High Court suspended the “No jab, no services” directives.¹⁷¹

By the end of June 2022, 24% and 13% of the population had received at least one vaccine and were fully vaccinated, respectively. Given the foregoing, this scorecard recommends that the ministries in charge of health for the incoming national and county governments do the following so as to secure people’s right to health as envisioned in the CoK.

Table 9: Extended Recommendations on Improving Access to Health Rights

Action Required		Timelines
1.	Embrace a participatory public review and launch of a more comprehensive Universal Health Coverage Programme, in consultation with 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 the 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.	Adequately invest in health workers and health infrastructure	Within 180 days
7.	Finalise and disseminate safe abortion guidelines and standards and guidelines, 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

¹⁷¹ Reuters, Court halts implementation of COVID vaccination requirement in Kenya <https://www.reuters.com/world/africa/court-halts-implementation-covid-vaccination-requirement-kenya-2021-12-14/>



5.0: Right to Adequate Housing

5.1: Norms and Standards

Article 43 of the CoK guarantees every person accessible and adequate housing and reasonable standards of sanitation.¹⁷² This includes the right to security of tenure, physical safety, essential water, sanitation, lighting services, and freedom from forced eviction or unreasonable rent hikes.¹⁷³

5.2: The Jubilee Government's Commitments

Adequate housing was a key pillar of the Jubilee government's goal to transform society. Soon after coming into office in 2013, the Jubilee coalition promised a decent home for all Kenyans. The Jubilee coalition affirmed that every Kenyan, including those living in urban informal settlements and remote villages, had the fundamental right to a warm, safe, secure home with access to clean running water, sanitation, and electricity.

The government pledged to guarantee all Kenyans a decent home by introducing measures to upgrade the informal settlements around Nairobi, Mombasa, Kisumu, and other urban areas, and by supplying affordable loans to low-income Kenyans to enable them to build their own homes. The government also committed to facilitate counties to provide new low-cost housing for rent.¹⁷⁴ However, the same Jubilee coalition downsized the commitment in 2017 to 500,000 new houses through budgetary allocations and private partnerships.¹⁷⁵

¹⁷² Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing, Art. 11(1) of the ICESCR (1991) para. 7 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f4&Lang=en

¹⁷³ *ibid* para. 8.

¹⁷⁴ Transforming Kenya: Securing Kenya's Prosperity (2013-2017 Manifesto of the National Alliance, The United Republican Party, The National Rainbow Coalition and The Republican Congress Party of Kenya).

¹⁷⁵ Continuing Kenya's Transformation, Together (Jubilee Manifesto 2017).



5.3: Status of Implementation

The Affordable Housing Programme

In his 8th State of the Nation address to parliament, President Kenyatta identified three successes of his government in realizing commitments to adequate housing. They include the production of 186,000 housing units, a decrease in the general prices of houses, and the establishment of the Kenya Mortgage Refinance Company as a measure for institutionalizing the Affordable Housing Programme.¹⁷⁶

Other achievements include the introduction of the National Housing Development Fund; the National Housing Corporation to accelerate mortgage and cash-based investments; innovative low-cost building materials; online platforms like Boma Yangu Online

Platform to facilitate registration for housing allocations; and tax incentives on mortgage repayments and affordable housing projects in Pangani, Ngara, Mavoko, Mukuru, Changanwe, Buxton, Kakamega, and Nakuru.¹⁷⁷

Despite these worthy initiatives, the affordable housing programme did not realise its intended aims of providing adequate housing to Kenyans. The 250,000 housing units remain short of the 500,000 housing units promised in 2017.

By concentrating on private-public-partnerships and targeting formal income earners, the programme has benefited higher-income households and not the initially intended lower-income households within the informal economy. Within the formal earners' bracket, the focus is tilted towards the top 3% of households with a KShs. 100,000 (1,000 USD) monthly income who can afford service a mortgage.¹⁷⁸ Not surprisingly, the percentage of the urban population living in informal settlements and inadequate housing increased from 7% in 2015 to 7.9% in 2019.

While the Kenya Mortgage Refinancing Company has enabled some Kenyans to secure mortgages at interest rates of less than 9%,¹⁸⁰ the government has not effectively addressed the high property prices and prohibitive costs of land, high incidental costs, and delays in property registration.¹⁸¹

The next Government must build on social housing initiatives and extend the current projects in 15,000 and 4,500 units for houses in Mukuru and Soweto B, Kibra currently underway

¹⁷⁶ Eighth State of the Nation Address supra.

¹⁷⁷ *ibid.*

¹⁷⁸ Hakijamii, 'State of Housing Report: Is Government Faltering on its Big Four Housing Promises?' (2019) <https://www.hakijamii.com/wp-content/uploads/2020/01/State-of-Housing-Report-Volume-2.pdf>

¹⁷⁹ Supra Second National Voluntary Review on the Implementation of the Sustainable Development Goals.

¹⁸⁰ <https://kmrc.co.ke/>

¹⁸¹ Declaration from the Affordable Housing Conference held on 8 and 9 December 2021 in Naivasha, Kenya <https://kmrc.co.ke/kmrcaffordable-housing-conference-2021-declaration/>



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The government's assertion that by promoting interlocking stabilised soil blocks technology, house prices have reduced significantly requires more investigation and empirical evidence.¹⁸² Government argues that the costs of construction has reduced from Shs 40-60,000 to 20-40,000 per square metre depending on the location.¹⁸³ House affordability for most poor Kenyans remains as far-distant.¹⁸⁴ Incoming administrations will have to address these challenges and others posed by land transfer delays and persistent court cases.¹⁸⁵



Forced Evictions

Although the Jubilee administration is constitutionally obligated to refrain from and prevent forced evictions, human rights organizations documented multiple instances of forced evictions to make way for infrastructural development projects or private development. Evictions have taken place without due process, such as adequate notice, genuine consultations, and legal remedies including compensation or relocation.

In January 2014, hundreds of homes belonging to the Sengwer Community living in the Embobut Forest, Cherengany Hills, were burnt in a bid by the Kenya Forests Service to evict the Sengwer people.¹⁸⁶ In May 2015, the homes of over 100 people living in Jomvu, an informal settlement along the A 109 Highway in Mombasa, were also demolished by the Kenya National Highways Authority as part of preparations for a highway expansion project financed by the African Development Bank, the German Development Bank, the European Investment Bank, the EU-Africa Infrastructure Trust Fund, and the Government of Kenya.¹⁸⁷

A 2020 presidential moratorium on forced evictions during the Covid-19 pandemic left many hopeful that they would not be homeless in a pandemic. However, in February 2021, the Kenya Railways Corporation violently evicted 3,500 residents of Kibos.¹⁸⁸ In October 2021, hundreds of residents of Deep Sea were not adequately compensated after a decade-long attempts at forced evictions were stopped following representation by affected persons, elected officials, and housing rights organisations.

Still in October 2021, over 3,000 people of Dagoreti Corner Settlement were rendered homeless after forceful evictions by Kenya Railways Corporation and Kenya Power and Lighting Company officials.¹⁸⁹ In November



2021, Kenya saw one of the most extensive and inhumane forced evictions that destroyed the homes of 40,000 residents of Mukuru kwa Njenga to pave way for the construction of roads.¹⁹⁰

Following multi-year litigation spanning the two terms of the Jubilee administration, the Supreme Court determined that landless occupiers of public land who had established homes and raised families there acquire a protectable right to housing. Where individuals face eviction on grounds of public interest, they may seek protection such as compensation, adequate notice before eviction, observance of humane conditions during eviction, and provision of alternative land for settlement.¹⁹¹ In another precedence-setting judgement, the Supreme Court affirmed that evictions from informal settlements must comply with certain basic human rights principles, including the duties to give notice in writing, carry out evictions in a manner that respects the dignity, right to life, and security of those affected; protect the rights of women, the elderly, children, and persons with disability; and to give affected person priority to demolish and salvage their property.¹⁹²

These judgements give more progressive guidance to the Land Act (2016) amendments that prohibit unlawful occupation of private, community, or public land, and establish procedures for evicting illegal occupants of such land, including three months' notice and judicial remedies prior to eviction.¹⁹³ The Land Act (2016) establishes mandatory procedures during evictions; respect for the dignity, right to life, and security of those affected; effective protection for vulnerable groups; and special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction, among other safeguarding provisions.

Despite these statutory and judicial pronouncements, however, forced evictions under Jubilee administration continued in breach of court judgements. In 2020, the then Chief Justice David Maraga highlighted his concern that the government had disregarded a court order against the eviction and overnight exposure of thousands of families in Kariobangi on 4th May 2020 during the Covid-19 curfew.¹⁹⁴ Therefore, these developments invite recommendations on what the next county and national governments, through their ministries in charge of housing, ought to do in order to secure the rights of Kenyans in regard to housing.

¹⁸² Republic of Kenya, Combined Report of the 12th and 13th Periodic Reports on the African Charter on Human and Peoples' Rights and the Initial Report on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2020) paras 167-168 <https://statelaw.go.ke/wp-content/uploads/2020/11/COMBINED-REPORT-OF-THE-12TH-AND-13TH-PERIODIC-REPORTS-ON-THE-AFRICAN-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS-NOV-2020.pdf>

¹⁸³ Gok response to earlier draft of this scorecard. See end of the report

¹⁸⁴ 'Why affordable housing remains a pipedream for many Kenyans', Standard, 6 March 2020 <https://www.standardmedia.co.ke/real-estate/article/2001434251/why-affordable-housing-remains-a-pipe-dream-for-many-kenyans>

¹⁸⁵ Supra Hakijamii State of Housing Report

¹⁸⁶ Amnesty International Kenya, Families Torn Apart: Forced Eviction of Indigenous People in Embobut Forest, Kenya (2018) <https://www.amnesty.org/en/documents/afr32/8340/2018/en/>

¹⁸⁷ Amnesty International, Driven out for Development: Forced Evictions in Mombasa, Kenya (2015) <https://www.amnesty.org/en/documents/afr32/2467/2015/en/#:~:text=Kenya%3A%20Driven%20out%20for%20development%3A%20Forced%20Evictions%20in%20Mombasa%2C%20Kenya,-October%205%2C%202015&text=On%20the%20night%20of%2017,the%20arrival%20of%20armed%20police.>

¹⁸⁸ https://www.amnesty.org/urgent_action_kibos#:~:text=On%205%20February%2C%20at%2010,trapped%20under%20debris%20and%20killed.

¹⁸⁹ <https://www.amnesty.org/en/documents/afr32/3151/2020/en/>

¹⁹⁰ <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR3288292018ENGLISH.pdf>

¹⁹¹ Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others [2021] eKLR paras 151-152 <http://kenyalaw.org/caselaw/cases/view/205900/>

¹⁹² William Musembi 13 others v Moi Educational Centre Co. Ltd & 3 Others [2021] eKLR para. 58 <http://kenyalaw.org/caselaw/cases/view/216115/>

¹⁹³ Land Act (No. 6 of 2012) <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%206%20of%202012>

¹⁹⁴ 'State Disregarded Court Order on Kariobangi Evictions', The Star <https://www.the-star.co.ke/news/2020-06-08-state-disregarded-court-order-on-kariobangi-evictions-maraga/>



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Table 10: More Recommendations on Securing the Rights to Housing

Action Required		Timelines
1.	Nationally audit, resettle and compensate all victims of state-enforced evictions	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 the security of tenure or are resettled on land that has the security of tenure	Within 365 days
4.	Prohibiting forced evictions and ensuring that all development projects are human rights compliant.	Within 180 days
5.	Ensuring that all persons, including vulnerable persons such as children, women and persons with disabilities living in informal settlements, have access to essential services such as safe water and good sanitation facilities.	Within 180 days



6.0: The Right to Food

6.1: Norms and Standards

Article 43 of the CoK guarantees every person the right to be free from hunger and to have adequate food of acceptable quality and affordability.¹⁹⁵

6.2: The Jubilee Government's Commitments

Food security was another pillar that anchored the Jubilee government's goal of transforming society. In 2013, the Jubilee coalition promised to put food and clean water on every Kenyan table. In 2017, 100% food and nutrition security was clearly articulated in MTP3 and strategies were announced to encourage large-scale farming and boost small-holder productivity.¹⁹⁶ The government is committed to improving small-scale farmers' access to inputs, facilitating large-scale cultivation on more high-potential agricultural land, and improving the productivity. It is also committed to boost profitability for large-scale producers, improving extension services and investing in research and digitization.¹⁹⁷

In his 2021 State of the Nation address to Parliament, President Kenyatta identified his government's successes in realising commitments to food security. He stated that staple food had remained reasonably priced and that some parts of the country had a bumper crop. Other parts of the country had suffered severe drought occasioned by the poor short rains in 2020 and the long rains in 2021.

At least 2.1 million people living in arid and semi-arid lands required food relief in 2021. President Kenyatta concluded that his government would ensure that notwithstanding the severity of the drought, no Kenyan would die of hunger.¹⁹⁸

¹⁹⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food, art. 11 of the ICESCR (1999) para. 6. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en

¹⁹⁶ Supra MTP3.



6.3: Status of Implementation

Agricultural Policy Reforms

Since coming to power, the Jubilee government has implemented policies and programs that support sustainable agriculture. The administration has recorded several successes, including maintaining the productivity of agriculture sector contributions at roughly 33% of the GDP; land reform and the issuance of 1,238,623 title deeds. The Jubilee government has also overseen the digitization of land records for Nairobi, irrigation services support for small-scale farmers in other parts of the country, and supplementary initiatives such as crop insurance, fertilizer subsidies, expanded quality control facilities for fishing, and modernization of the New Kenya Cooperative Creameries (KCC).¹⁹⁹

Notably, government programs have tended to focus on supporting large-scale food production, not small-scale agriculture. Furthermore, the agriculture and food sectors have received decreasing budgetary allocations, down to 2.9% from 3.5% in the 2019/20 and 2016/17 financial year national budgets.²⁰⁰

The Jubilee government failed to effectively address unequal and inefficient food distribution and food wastage calculated at 40%, caused by lack of storage facilities and poor infrastructure for accessing markets.²⁰¹ Government disputes this figure, estimating that the upper limit for post-harvest loss lies at 30%. Bureaucratic inefficiencies, shortages, and outright corruption have undermined the government's 2022 initiative to provide each farmer with a 40-50 kilogramme bag of subsidized fertilizer. Cartels have been buying subsidized fertilizer in bulk and selling it for as much as KShs.6,000 (60 USD) instead of the advertised price of KShs 2,800 (28 USD).²⁰²

¹⁹⁷ Republic of Kenya, Agricultural Sector Growth and Transformation Strategy: Towards Sustainable Agricultural Transformation and Food Security in Kenya (2019-2029) <https://www.agck.or.ke/Downloads/ASTGS-Full-Version-1.pdf>

¹⁹⁸ Supra Eighth State of the Nation Address.

¹⁹⁹ Republic of Kenya, Agriculture Rural and Urban Development (ARUD) Sector Report, Medium Term Expenditure Framework, 2021/22-2023/24 (Republic 2021).

²⁰⁰ Layla Liebetrau, 'Realising the Right to Food: Kenya's Approach to Food Security in the Context of the Climate Crisis: Analysis' (Perspectives Africa, 16 December 2019) <https://za.boell.org/en/2019/12/16/realising-right-food-kenyas-approach-food-security-context-climate-crisis>

²⁰¹ Ibid.

²⁰² Francis Mureithi and Stanley Kimuge, 'Agony of Farmers Missing Subsidised Fertiliser' (Nation, May 21 2022) <https://nation.africa/kenya/business/seeds-of-gold/agony-of-farmers-missing-subsidised-fertiliser-3822210>



Food Security

The National Food Security Policy Implementation Framework (2017)²⁰³ sought to ensure that all Kenyans enjoy their right to food that is nutritionally safe, accessible and affordable. Tragically, millions of people have remained highly food insecure throughout the two terms of the Jubilee administration.

In November 2021, some 7.9 million people (15.4% of the total human population) experienced food insecurity due to failed rains, low agricultural production, and high food prices.²⁰⁴ Food and nutrition insecurity was particularly grave in counties with pastoral livelihoods, including Baringo, Garissa, Isiolo, Mandera, Marsabit, Tana River, Turkana, and Wajir.

Statistically speaking, 53.5% of Kenyans reported that they had sometimes or often gone without food in 2021, compared with 34% in 2019.²⁰⁵ By June 2022, over 4 million people in Eastern Kenya were in urgent need of food aid, and more than half a million children were acutely malnourished. As a result of the drought, tens of thousands of farm animals had starved to death; pastures had withered, and wells had dried up.²⁰⁶

Nairobi's informal settlements have not had it much easier. While food is plentiful in urban poor markets and streets, most households simply cannot afford to buy the food, resulting in a high prevalence of urban hunger and malnutrition. Emergency relief distribution has tended to ignore the most vulnerable groups such as persons with disability who are unable to position themselves to scramble for the distributed food.²⁰⁷

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Missed Opportunities

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Against this background, this scorecard recommends the following key priority areas for the incoming national and county governments through their ministries in charge of food security.

Table 11: More Recommendations on Boosting Rights to Housing

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

The background of the slide is a dark, blurred image of several books and papers. The books are stacked, and their pages are visible, creating a sense of depth and academic research. The papers are scattered, some showing text, but they are out of focus. The overall color palette is dark, with shades of brown, grey, and black, giving it a professional and scholarly appearance.

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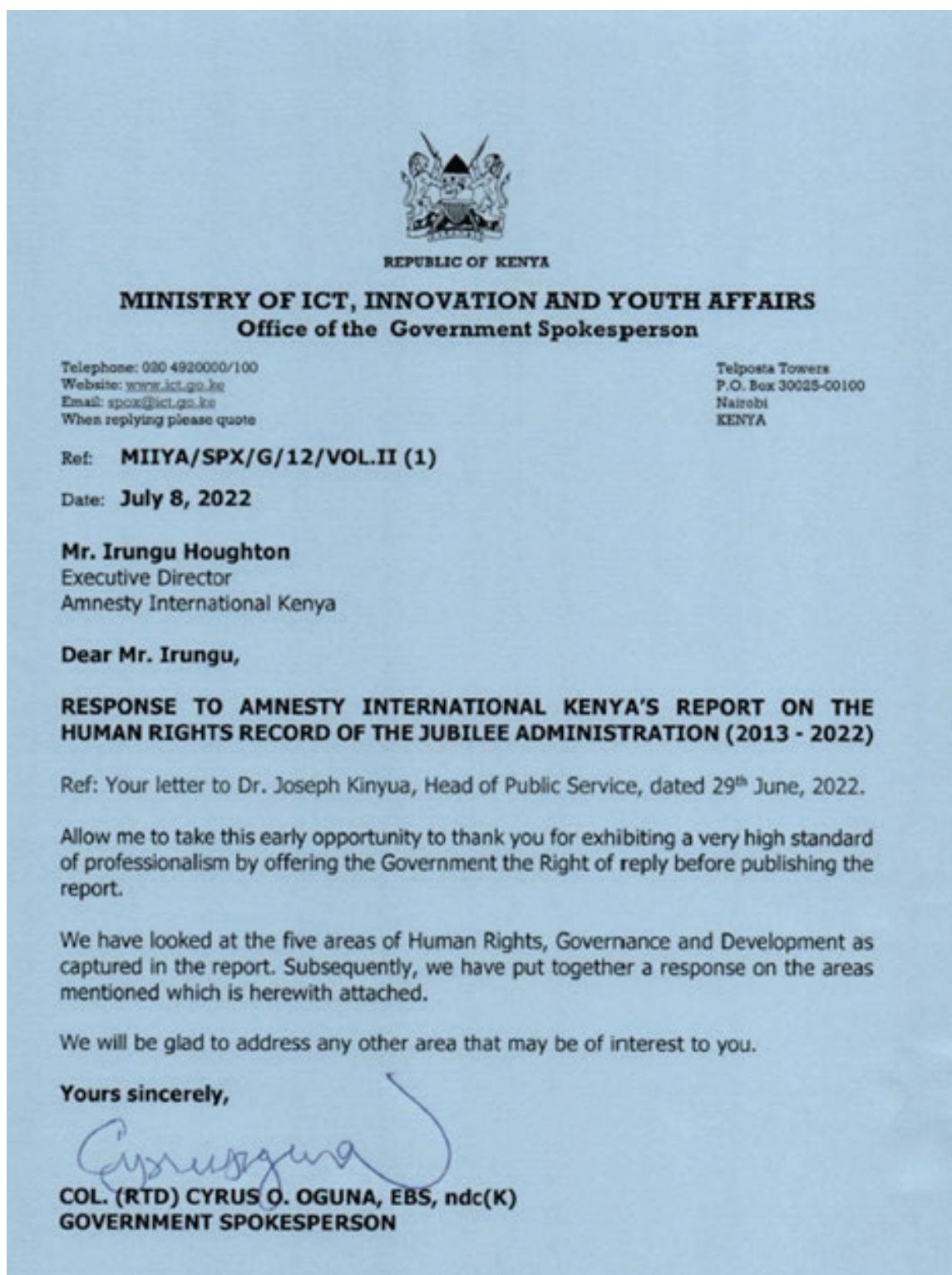
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APPENDIX 1: Response of the Government of Kenya to the Scorecard

Amnesty International's quality assurance standards require us to seek official comments from Governments prior to publishing research. The principle of the right of reply is informed by the need to ensure that policy research is accurate and useful to both state agencies and the public. We thank the Government of Kenya for exercising their right to reply to read and comment on the scorecard. We publish their comments in full at the end of this report. The scorecard findings and recommendations remain independent of this input, and we take full responsibility for the analysis contained herein.





GOVERNMENT OF KENYA RESPONSE TO REPORT BY AMNESTY INTERNATIONAL KENYA REPORT ON HUMAN RIGHTS RECORD OF THE JUBILEE ADMINISTRATION (2013-2022)

1. Police involvement in excessive use of force, enforced disappearance and torture

NPS has no systemic policy towards excessive use of force. All instances where officers abuse their powers and utilize excessive force are well documented, investigated competently dealt with, and actions taken as per the law.

As a minimum requirement, officers are fully trained and reminded on instances on when to use force. Occurrences where the police have been accused of using excessive force are not systematic as such. They are few and isolated.

It may important to state that there are adequate legal and policy structures to guide on excessive use of force, such as;

Institutional mechanisms and structures to oversight excessive use of force i.e. DCI, IAU, IPOA, DPP and judiciary.

Enforced Disappearance

On enforced disappearance, NPS and its agents are not involved, but only accused by human rights groups. Whereas these are issues for open investigations, the publics are always incited by human rights and civil organizations to non-cooperation, which then leads to such cases remaining open for lack of evidence. However, all files remain open for fact finding.

Torture is outlawed and criminal, and there is no police policy for involvement. Should an officer be involved, then firm action is always taken against the officer.

Violence against women

NPS is on the forefront of fighting crimes against women, children and disadvantaged. In place is a robust legal and policy regime guiding on support to survivors of SGVB based crimes

There are interventions in place namely establishment of gender based desks, developing of a novel criminal justice structure namely 'Policare' to provide real-time care and justice interventions to survivors of SGBV.

Policare concept moves beyond criminal justice solutions to provision of medical and psychosocial support to survivors.

There is also a trafficking persons crime desk within DCI which is focused on trafficking of women, girls and children

Further, there are many bilateral arrangements between the National Police and partners in strengthening law enforcement capacities through joint and shared training, equipment, information sharing amongst others.

Police curriculum is rich on democratic policing with emphasis on crimes against women and children.



2. Provision of Adequate and Decent Housing

Provision of adequate and decent housing to our people is a right in our constitution. The Government has been committed to ensuring that this right is fulfilled through the policy of affordable housing as a pillar of the Big 4 Agenda.

The pillar to help actualize Jubilee Manifesto was influenced by the reality that there is a shortage of decent housing in the country. This has made rent, the cost of construction and land to be unaffordable for many. The situation has been compounded by urban rural migration, most of whom end up in the informal settlement.

Affordable Housing Program was therefore aimed at reversing this trend to avail affordable decent housing to many, bring the cost of construction, and land down.

Current Status

Over 250,000 units have been constructed as opposed to the **186,000** that is indicated in the report. Further, another **650,000** houses are in the pipeline, way above the 500,000 units of 2017. The houses are being constructed across the country by sector players, with the Government playing the role of regulator, and providing tax concessions on construction materials to be used for affordable housing. Houses are segregated between **Social Housing for the low income earners**, and **Affordable Housing** for the middle class.

Social Housing products cost below Kshs 1million, with projects at Meteorological Site, **Mukuru with 15,000 units, and 4,500 units at Soweto B' in Kibra**. In **Affordable Housing**, products range from **Kshs 1.5 million to Kshs 4.5 million**. These rates are way below the normal market rate which ordinary would be twice the amount. The allegation that Affordable Housing products are only for the wealthy, and out of the reach of common mwananchi is false, and not factual.

Cost of Construction

Due to the Affordable Housing Program, the cost of construction has come significantly. 2-3 years ago, the cost of construction was pegged at Kshs 40k-60k per Sq metre. This has now come down to Kshs 20k-40k per sq metre depending on the location of the construction.

Cost of Land

In order to impact of the cost of construction and to provide housing products at an affordable rate to Kenyans, the Government has created a Land Bank. This bank currently has 12,000 acres of both National Government and County Governments land which are now available for the construction of affordable housing units.

3. The Right to Food

The Constitution guarantees all Kenyans the right to affordable and adequate food, and to be free from hunger. To this end, the government has instituted various policies and programs to achieve it. The policies include extension workers, provision of subsidy for fertilizer and seeds, education on modern methods of farming, research, etc.

Post-harvest losses: It is appreciated that post-harvest losses remain an issue. However, the amount of losses currently stands at **10% for maize, and 6% for wheat as opposed to 40%** as indicated in the report. Generally, post-harvest losses across the entire value chains range from **10-30%**.



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To reduce post-harvest losses, emphasis has been placed on appropriate grain drying and storage technology. Currently, the government, through Micro and Small Enterprise Authority (MSEA), is constructing potato cold-chain facility in Nyandarua. Other measures include;

- Capacity building of county extension officers on technologies to mitigate Aflatoxin hermetic bags, Appropriate grain drying structures etc
- Procurement and distribution of Aflasafe Ke-01 to counties for demonstration and issuance to vulnerable farmers
- Procurement and distribution to counties of other technologies like moisture meters, hermetic bags and hand shellers
- Sensitization and awareness creation to the general public on Aflatoxin management

Fertilizer: On Fertilizer, the Government rolled out the subsidy program to forestall the impact of international fertilizer prices on agricultural productivity. To implement the program, the Government disbursed Ksh 5.74 billion targeting **910,000 farmers with one acre each.**

The applicable prices were based on the specific type of fertilizer. There are six types of fertilizer with **subsidized selling prices** ranging from Kshs 1,950 for the cheapest to Kshs 3,000 for the most expensive. The subsidy component provided also varied from each type of fertilizer, ranging from Kshs 1,700 to Kshs 4,975.

The subsidy purchase is however capped at 40 bags of 50kgs bags. Any farmer requiring more, then buys from the commercial section of National Cereals and Produce Board at the going market price. Allegations of cartel hoarding, and then selling to farmers is not in our record since no farmer is allowed to **buy more than 40 bags.**

4. Civic Space and Freedoms

The constitution confers every Kenyan the right to freedom of expression, association, and media freedom as well.

All these freedoms are guaranteed in the country, and there are no documented instances when an individual has been denied any of these rights. Kenya is considered as one of the leading countries where citizens enjoy all rights.

However, these rights are enjoyed with limits. Limits have been set through procedures that must be followed. For instance, if one wishes to hold a demonstration, protocols on how to go about it are known. Failure to do that certainly become an offence. There are no rights without duty. This is why seeking clearance becomes necessary. Allegations that Freedoms of Association and Expression are restricted in the country are false.

Media Freedom

Just like the other Freedoms, unlike other countries, the media in Kenya enjoys unrivaled freedom. Without a doubt, there is no country in Africa where the media enjoys the degree of freedom as the media in Kenya.

This is supported by the media freedom index in which the country has jumped 33 spaces within one year from position 102/180 in 2021 to position 69/180 in 2022.

This is further evidenced by the increased number of broadcasting licenses that have been issued in the last two years, with 99 issued in 2020/2021 and 128 licenses upto the third quarter of 2021/2022. Additionally, the number of accredited journalists has grown from 3000 to a record high of 7000.



These figures can only mean one thing; that the media space is free and accommodative, with no interference from the Government. Allegations of routine attacks on media houses by security officers is preposterous. The word routine means every now and again. It would really help if the report can cite cases of media house attack year by year. In data, we have no record of an attack on any media house in the last 10 years.

However, in situations where an officer, a politician or their supporters attack a journalist, or a media house, then it becomes a criminal case, and the law applies.

5. UHC Section

In the UHC Section the document comments are about the Pilot which was phase 1 of the UHC Journey. The UHC Journey is being carried out in 4 phases as listed below:

The first phase was the one year, December 2018-2019, pilot in four counties (Nyeri, Machakos, Isiolo, Kisumu) using input-based financing.

The second phase (January to June 2020) focused on health systems strengthening through input-based financing for basic equipment, medicines and human resource in all 47 Counties.

The third phase (July 2020 to June 2021) included a transition from input to output-based (Social Health Insurance) financing through a defined Essential health benefits package and coverage of an initial one million indigent households.

The fourth phase (July 2021 onwards) envisioned a full transition to the UHC Insurance Scheme, which shall be progressively expanded to cover all the 5.2 million poor and vulnerable households and provide mandatory membership for those that can afford in both the formal and informal sectors.

It should be noted that we are currently in phase 4 of the journey and for the input financing which was what predominant in the Pilot, the lessons learnt were used to scale up to the other Counties in Phase 2. It should also be noted that during Phase one there was no component on insurance; all services were free to the end user and this was not sustainable. To make UHC sustainable Social Health Insurance was introduced in phase 3 and is currently being scaled up countrywide.

There are challenges that were mentioned in the report which were realized during the pilot phase and against each challenge there is a response on the measures put in place to address them:

Corruption: here are Government Bodies and laws in place to deal with Corruption and those in health are not exempt. The Cabinet Secretary in the Ministry of Health formally invited these bodies to investigate and take administrative action as per their mandates

Health workforce neglect: (Under Construction)

Delayed disbursements: In the Pilot, disbursements were dependent on the Counties accounting for the resources disbursed as clearly Spelt out in the Inter-Governmental Participatory Agreements. In phase 2 there were no disbursements but support was given in kind through were draw- downs for medicines and commodities at KEMSA.

Poor Public information: The Ministry has been involved in various public communication platforms on UHC including the media, panel discussions and UHC has featured in various Government speeches. The NHIF has also been communicating to the public through its branches. Communication will continue to appraise the public.



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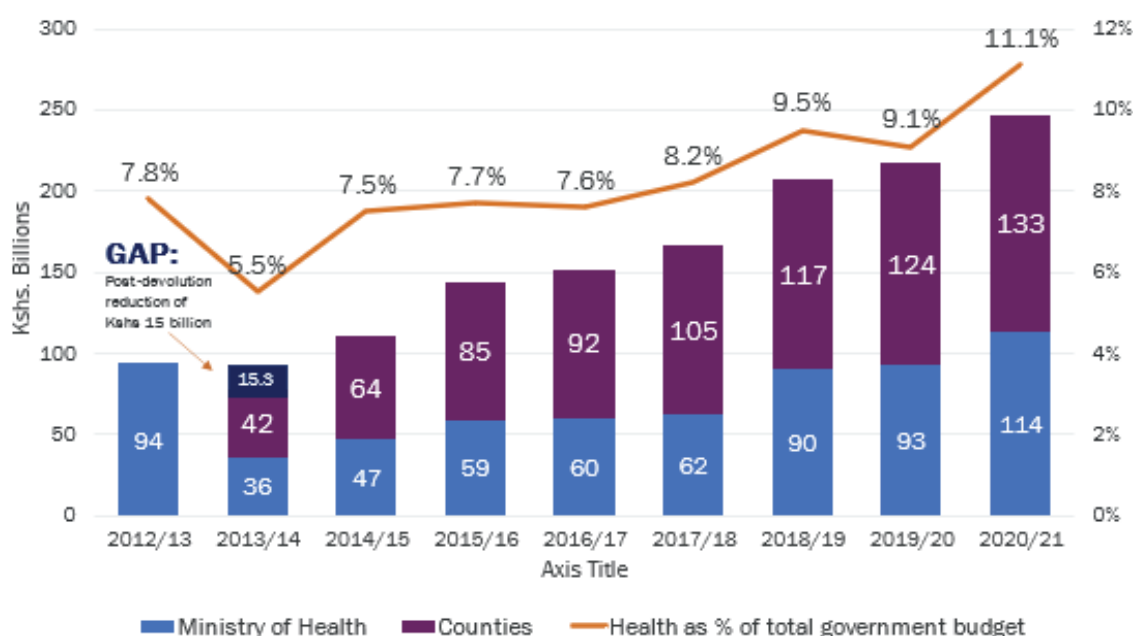
Lack of public participation: The UHC Policy 2020-2030 which was launched on 7.2.2022 identifies the public as a stakeholder in the management of the health services at the local level. The Health Sector Partnership and Coordination Framework 2018-2030 which was also developed and launched after the pilot, provides for Counties to set up a County Health Sector Coordinating Committee or forum in which CSOs are members to give inputs in the coordination of investments pertaining to health at the County level. In this way, avenues are created for public participation in the Health.

Health financing section

The investment in specialised equipment cannot be termed as a diversion of resources but rather a way to ensure Kenyans can access specialised services in line with UHC aspirations. The allocations to MES is part of the Government allocation and expenditure to health and therefore part of progress towards targets including Abuja declaration.

The Jubilee Government as quoted in the report targeted to allocate 12% to health. It is imperative to note that a lot of progress has been made towards this target as Government (National and county) allocation on health increased from 5.5 % in 2013/14 to current 11.1% in 2021/22. (very close to the 12% target). This allocation on health cannot be termed as below international standards as the Government had already set its standard at 12%. It's important to note that the 15% Abuja target is just a guide for countries ---and therefore countries are at liberty to set their targets considering their own context.

Continued Increase in National and County Budget Allocation to Health





Managed Equipment Service Response

The aim of Managed Equipment Service was to upgrade at least two County hospitals through the provision of diagnostic and critical care equipment to compliment the primary health care services of the Level 1, Level 2 and Level 3 health facilities. The major goal of MES was to increase access to equitable, affordable, and quality health care of the highest standard in Kenya through equipping the selected hospitals with state-of-the-art medical equipment that include theatre, CSSD, dialysis, ICU, and radiology equipment.

The selection of the beneficiary hospitals was done in consultation with the County Governments and thereafter the contract awarded and signed with five (5) contractors. The equipment required in the selected two (2) hospitals comprising a level 4 and 5 hospitals in each county was informed by an assessment of the hospitals selected. The assessment was conducted by a technical team from MoH and accompanied by each County's team to ascertain the infrastructure, equipment, and personnel capacity. The assessment result was used in building the list of equipment required to strengthen the selected hospitals.

The responsibilities of the MES Contractors was to deliver a fully integrated solution to the selected hospitals that include supply, installation and commissioning, related user-training, maintenance, and replacement of the medical equipment. Through implementation of MES the Government improved access to basic and specialised health services, improved equity of health services countrywide, mitigated budgetary constraints required for upgrading infrastructure and equipment and also improved macroeconomics of the country.

In addition to improving equity and access to theatre, dialysis, ICU, and radiological diagnosis services, during the last 6 years, MES has provided services to many Kenyans that includes provision of 628,821 surgical operations in the 219 MES theatres, 385,587 dialysis sessions, 7,700 patients being admitted in MES ICUs, and 3,848,162 digital x-ray examinations, 1,797,597 ultrasounds examinations, 40,840 digital mammography examinations and 91,033 digital dental x-ray examinations. In return, the counties have benefited from collecting revenue from the services being offered which can be ploughed back to the Counties and hospitals.

(The source of data: Final survey of MES equipment done during the month of May and June 2021)

Based on the final survey results, none of equipment supplied and installed through MES are obsolete or unusable or no longer required by the hospitals. Instead the hospitals were requesting for more equipment especially the renal and ICU equipment.

MES arrangement has demonstrated the importance of expanding access to services that were previously unavailable. The availability of MES services has reduced travel distances for patients whose management requires theatre, dialysis, ICU, and distinct types of diagnostic imaging services. In addition to improvement of availability of state of the art medical equipment to 121 hospitals, MES has allowed thousands of Kenyans to directly benefit from services provided through MES while increasing revenue generation for the counties. The two levels of government are working together to continue improving service delivery while expanding healthcare services to deserving areas.

Training is also conducted to the end Users and Biomedical Engineers on how to use and repair the equipment respectively whenever there is a corrective fault. The capacity building improves the skills of the Engineers to respond to equipment breakdown beyond the project term.

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.



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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 for all persons.

Twelve human rights organisations and trade unions offered their experience and insights in the research and writing of this report. They include Amnesty International Kenya, The Nubian Rights Forum, The People's Health Movement (PHM), White Ribbon Alliance, Umande Trust, Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU), Pamoja Trust, HIVOS, Wangu Kanja Foundation, and Defenders Coalition.

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