

ARTICLE19

Kenya: Violations of Media Freedom

May 2017 – April 2018

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Editorial Note

Cases in this report are from reports filed by journalists and monitors in Kenya, Tanzania and Uganda and analysis of reports by local, regional and international media, and nongovernmental organisations, as well as consultation with relevant experts. The list of cases might not be exhaustive, but it is based on reports monitored and filed by ARTICLE 19 and verified as deliberate attacks on freedom of expression, where the intention of the perpetrator was to silence the journalist or social media users. See Annex 1 for full Methodology.

Acknowledgements

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Table of Contents

Introduction	4
Methodology	6
Arrests And Detention	8
Physical Attacks	10
Threats Of Violence	13
Impunity	14
Media Shutdown And Threats Of Legal Or Other Action	15
Recommendations	17

Introduction

From May 2017 – April 2018, ARTICLE 19 recorded 94 incidents of violations against individual journalists and media workers, including bloggers as well as media houses.

Media freedom in Kenya was clearly in decline in 2017. Political instability around disputed elections in August, which saw mass protests met by excessive use of force by police, was accompanied by dozens of violations against journalists and media workers trying to report on political issues and protest. Violations continued throughout the year, with journalists facing harassment and threats from a number of actors including public officials, media shutdowns, and online censorship.

Journalists who covered the 2017 general elections worked in an exceptionally challenging environment. Attacks against them showed a marked rise in severity and in numbers during prolonged elections period that saw journalists face physical attacks, arrest, being denied access to areas, and receiving various forms of threats, even more so after the August Elections and in the run up to the October repeat presidential poll. ARTICLE 19 recorded a total of 41 cases of violations against journalists during this two month period alone.

ARTICLE 19 also recorded 30 cases of violations in January 2018, at the height of elections petitions in various courts across the country. This constitutes 38 per cent of the total violations during the monitoring period.

Politics and elections, security and corruption were among the top dangerous stories to report on by journalists between the period monitored.

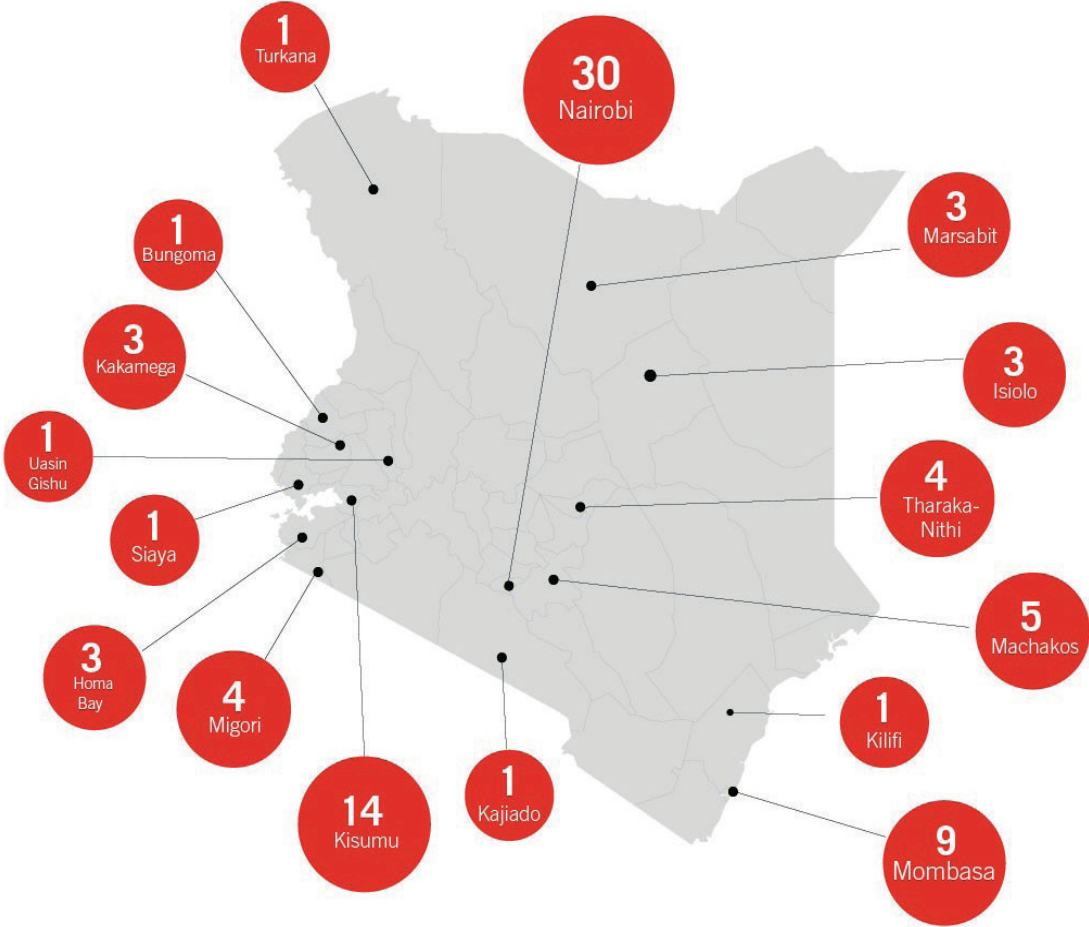
A total of 43 journalists were physically assaulted during the monitoring period, and one received death threats, while three TV stations were shutdown for covering content seen as undesirable by the government.

Cases of attack on the freedom of expression were documented in fifteen of the country's 47 counties. Supporters of various political formations were the main culprits followed by police, private individuals and unknown assailants.

This report highlights key examples of violations against journalists and media workers during the monitoring period, and sets out recommendations to the government, security forces, and politicians to take action to end this wave of attacks on the right to freedom of expression.

Forms of violations

Physical attacks	Arrests	Threats	Denied access	Media shutdown
43	11	19	15	3



Methodology

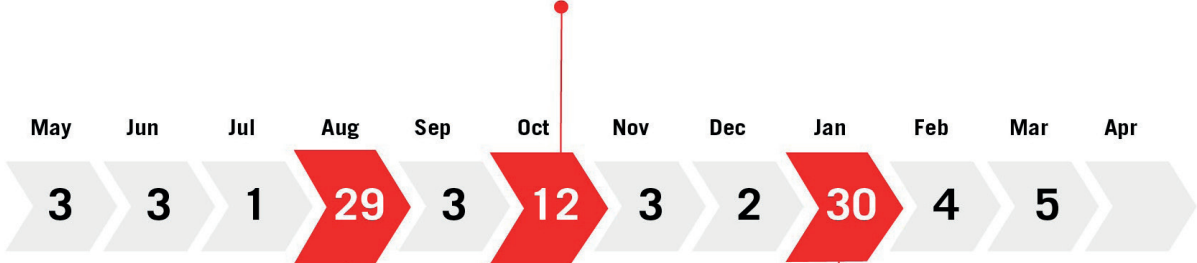
- 1. Field research and analysis:** Detailed interviews with selected journalists, media managers, and editors on the state of freedom of expression and information in Kenya, using a tailored questionnaire. Data was also collected from around 150 journalists trained on safety and protection in Kenya across the country in 2015.
- 2. Case studies:** Interviews were conducted with media practitioners from different parts of the country whose journalistic right to freedom of expression has been violated.
- 3. Data comparison:** Field data was collated and analysed to establish patterns and conclusions. Cases and information were corroborated by other media monitoring groups: Committee to Protect Journalists (CPJ) Uganda Human Rights Network for Journalists and other media monitoring groups
- 4. Literature review:** A comprehensive review of relevant literature, including newspapers and reports from nongovernmental organizations, which corroborated details or patterns of abuses described in the report. The data, analysis and conclusions made are those of ARTICLE 19 and do not in any way reflect the views of collaborating organisations.

How was data collected?

- Cases reported directly to ARTICLE 19 by journalists, often while seeking assistance;
- Media monitoring and documentation of cases on a daily basis by ARTICLE 19;
- Direct interviews with selected journalists; and
- Review of police case files.

Number of violations
May 2017 - April 2018

After the Supreme Court annulled the results of the original vote due to irregularities, a second election was held on 26 October 2017. Odinga boycotted the vote and Kenyatta won for a second time.



On 8 August 2017, Kenya held general elections, with the majority of votes split between incumbent President Uhuru Kenyatta, and rival Raila Odinga. The official results held Kenyatta as the winner, but this was widely disputed.

In January 2018, election petitions challenging the results were being decided in a number of courts across the country. Odinga, rejecting the results of the October re-run, held a 'swearing in' ceremony for himself, which media were censored for covering.

2016 - 2018



May 2016- April 2017

May 2017- April 2018

Arrests and detention

Eleven journalists and media workers were arrested and detained during the monitoring period.

These included:

- On 18 June 2017 police arrested *Sunday Nation* journalist Walter Menya on charges of soliciting a bribe of 55,000 Kenyan shillings to “write a damaging story in The Nation newspaper,” according to the charge sheet. Menya was released by Senior Principal Magistrate Martha Mutuku on a free bond after spending two days in custody but the charges remain.
- On 12 August 2017, Duncan Khaema, a political reporter with Kenya Television Network (KTN), alongside cameraman David Otieno, were arrested and charged with possessing a helmet and body armour without a proper license. They were covering violent post-election protests in Nairobi’s Kibera slums. Although the two had produced the certificate of importation, end user certificate, and clearance certificates from the government’s chief firearm licensing officer, however police insisted that they should have their individual license as well. Police roughed up the two before arresting them, and they were later released on free police bond.

Both media workers had earlier been confronted by a GSU officer who demanded to know who had authorised journalists to cover their operation in Kibera slums.

“Police demanded that we tell them who had given us clearance to be on the ground. It was a horrifying situation. On one hand the public was putting more pressure on us through social media and calls on why we were not reporting on alleged police brutality and on the other hand we were under immense pressure from government officials to stop on location live broadcast.”

Khaemba

- Longton Jamil, the administrator of Kajiado Unity of Purpose WhatsApp group was arrested and detained at Isinya Police Station on 12 August 2017 over allegations of spreading false information on the social media platform.¹
- On 13 August 2017, Citizen TV reporter Wilkister Nyabwa and cameraman Justus Netia were arrested by police in Kisumu immediately after they had finished doing the 9pm news link. Their arrest was linked to the story which had aired on Citizen on how police raided houses in Manyatta, Obunga, Kondele and Nyalenda and beat up residents. They were later released after interrogation and recording their details with police.
- Blogger Robert Alai was arrested on 19 August 2017 after publishing a story touching on the Kenyatta family. Alai was then taken to Kamukunji Police Station and was detained for over six hours before being released.²
- On 4 November 2017, foreign journalist Yasuyoshi Chiba, head of photography for Agence France-Press (AFP) in Nairobi, was arrested and charged for taking photos, trespassing at Brookside Dairy. Chiba was arrested as he allegedly took pictures at Brookside Dairy a leading milk processor in the country associated with President Uhuru Kenyatta. He was taken to Ruiru police station where he was released on a Sh 10,000 police bail. All charges are still pending in court.

¹ <http://nairobi.news.nation.co.ke/news/whatsapp-group-admin-arrested-fake-news/>

² <http://www.nation.co.ke/news/Blogger-Robert--Alai-arrested/1056-4063148-faeq7/index.html>

Physical attacks

ARTICLE 19 documented 43 cases of physical attacks against journalists and media workers in the monitoring period.

These included:

- On 13 July 2017 Star newspaper journalist Eric Oloo sustained serious injuries to his jaw and teeth after he was beaten by supporters of Siaya Governor Cornell Rasanga at Mwer trading center in Siaya County.³ Oloo had reported the matter to Siaya Police Station, however no investigations were conducted.
- On 5 August 2017, Kangundo Member of Parliament Mutatha Maweu and his supporters attacked five journalists over claims they had published negative stories on him. The journalists recorded a statement at Kangundo police station in Machakos County. The police did not take any action against the politician.
- On 13 August 2017, Nation Newspaper photographer Dennis Onsongo was attacked and had his lens stolen while covering the post-election protests in the Mathare area of Nairobi.⁴
- On 13 August, foreign journalists too were not spared. The Wall Street Journal, Africa Correspondent, Matina Stevis and another freelance journalists Neil Shea were attacked by security officers. Officers hit Stevis on the head with a wooden baton and Shea was attacked by about five security officers who beat him and destroyed his camera.⁵
- Other foreign journalists have been at the receiving end largely because of the original stance of the US election observatory mission lead by John Kerry under the Carter Centre which seemingly had endorsed the presidential election as having been “free, fair and credible”.
- On October 2017, in Migori, journalist Basil Okoth of *Milambo Radio* sustained serious injuries in an attack by General Service Unit (GSU) officers while covering protests at Awendo in Western Kenya. Okoth was assaulted and his press card, phone and cash confiscated. He was forced by the security officers to clear barricades erected by the protesters on the road amid beatings.

³ https://www.the-star.co.ke/news/2017/07/14/goons-attack-and-injure-star-journalist-in-siaya_c1596246

⁴ <https://www.standardmedia.co.ke/article/2001260670/journalists-caught-in-chaos-nurse-injuries>

⁵ <https://www.ifex.org/kenya/2017/08/23/journalists-assaulted-elections/>

- On 9 October 2017, in Kisumu, five other journalists were harassed, beaten and injured by police while covering the anti-IEBC protests. More than 20 officers from the GSU assaulted Rashid Ronald of *KTN* and Faith Matete of the *Star* near Kisumu Boys High School, injuring Ronald on the leg. According to the journalists, the officers said both journalists and protestors are one and the same while on the streets. The officers then lobbed tear gas canisters at *NTV's* Ouko Okusa, his cameraperson Doreen Magak and *Daily Nation* reporter Rushdie Oudia. The law enforcers claimed journalists had exposed their operation alleging brutality against protestors.
- On 31 October 2017, Citizen Television Senior Political Reporter Francis Gachuri and Nation Television (NTV) camera person Jane Gatwiri were assaulted by supporters of National Super Alliance (NASA). A KTN reporter was also besieged as he tried to intervene and save Gachuri and Gatwiri. Before attacking the two reporters, a group of young men repeatedly threatened the journalists and singled out Citizen, NTV and KBC as the media houses they claimed were leaning towards the re-election of President Uhuru Kenyatta.
- On 20 November 2017, Stella Cherono and Brian Moseti were attacked by youths wielding stones and clubs after the Supreme Court ruling on the elections results. Cherono and his colleague had arrived to cover the protests against the ruling in Lucky Summer, Nairobi, when they were attacked and robbed of their phones and other valuables.
- On 3 January 2018 journalists Philip Ekadeli of Radio Maisha, Hesbon Et Young of The Star Newspaper, Sammy Luta of Daily Nation and Peter Warutumo of were roughed by a mob of locals who destroyed their cameras and recorders in Turkana County.⁶
- On 24 January 2018 eight Lodwar based journalists for the Star, KBC, NTV, KTN, Citizen, Radio Maisha, and Daily Nation were assaulted by individuals allegedly hired by a local politician.
- On 26 March 2018, journalists Sophia Wanuna of KTN, Stephen Letoo and Robert Gichira from Citizen TV were attacked by police while covering opposition member Miguna Miguna's return to the country at Jomo Kenyatta International Airport.

⁶ <http://www.pulselive.co.ke/entertainment/janet-mbugua-s-husband-lands-a-new-job-in-a-top-company-id7796442.html>

Media in the firing line: journalists covering protest

On 17 November 2017, journalist Duncan Khaemba almost lost his life in the course of his work again. He received a head injury after being dispatched to cover the return of opposition leader Raila Odinga from his US visit. For more than six hours, Khaemba and his team not only witnessed the use of anti-riot artillery in the country but also witnessed their brutal impact on protestors.

Police lobbed tear gas at the van carrying media workers, forcing them to run for safety. One cameraman almost fell from the truck and another one dropped his camera while jumping off the moving truck, which was facing a heavy cloud of tear gas fumes and water cannons.

“I wanted to do a live report atop our truck when clouds of tear gas and water cannons flew in our direction. I witnessed police shoot dead a supporter. At this time, we were all scared and we flew off the truck. One photographer dropped his camera as he choked on fumes of tear gas,” - Khaema

According to Khaemba, six protestors were gunned down by police. A group of youth emerged from Muthurwa market pelting stones at the convoy and the supporters of the opposition leader. It's at this stage that a stone ripped through the truck's window and hit Khaemba.

“At first I thought it was a bullet,” he said.

Luckily for Khaemba they were able to drive to safety and he was taken to hospital for treatment, but was left with a bloody and bandaged head.

This experience was however not unlike that of journalists in other parts of the country before, during the after the elections, as violent protest were met by crackdowns from police.

Threats of violence

- On 13 August 2017, Samwel Owino and Andrew Ochieng of *Daily Nation* and NTV respectively were forced to flee from a political rally in Kibera after youths allied to Nasa threatened to attack them. This after the Siaya Senator James Orengo accused the Nation Media Group (NMG) of failing to cover alleged police brutality against supporters in Kibra, and sections of Nairobi and Kisumu counties. Journalists interviewed for this report said police blockaded all roads leading to some locations of Kibera to prevent the agitated youth from coming out and pour to the streets in protests against the disputed presidential election 2017.
- On 22 January 2018, Standard Group reporter Ali Abdi went into hiding after receiving several threatening phone calls from an aide of a former governor over a story that was published in the *Standard* newspaper. Abdi claimed he received threatening messages in connection with the story that reported that ward representatives in Marsabit were unhappy with President Uhuru Kenyatta's choice of Ukur Yattani for the Cabinet. Abdi reported the matter at Isiolo Police Station.



Nairobi journalists hold peaceful demonstrations to protest over the killing and harassment of their colleagues in the country on 9 September 2016. Photo by Robert Wanjala @Article19

Impunity

During the reporting period, physical attacks and threats increased in number, intensity and brutality, with some of the cases resulting in the victims sustaining serious injuries and damage to equipment. Yet, despite the Constitutional guarantees of media freedom, many of these violations have not been investigated, even when the perpetrator is known to the authorities.

Lack of accountability for reported threats and attacks on journalists has a damaging effect on freedom of expression, and has led to self-censorship by media workers, in some cases forcing them to completely stop pursuing sensitive stories that otherwise might have fostered accountability in an environment of impunity.

Of the 94 violations documented by ARTICLE 19, 77 of these warranted investigation. However, of the 77, only 34 incidents were officially reported and only one of the 34 incidences resulted in the perpetrators subsequently being taken to court. This is a 3% rate of effective investigation and accountability, suggesting a high level of impunity for attacks on journalists and media workers.

On 26 January 2018, three officials from KANU were brought to court for allegedly attacking journalists in Lodwar town, Turkana County. Francis Ethuron also known as KARE, David Ewar Lokadelio and David Angechel Merimug the Kanu Secretary for Turkana, were charged with malicious damage to property and assaulting journalists on the 24 January at KANU's Offices in Lodwar town.

Merimug, was accused of slapping journalist Hesbon Etyang and causing him bodily injuries. Lokadeli was accused of destroying a recorder worth 25,000 Kenya shillings the property of Philip Ekadeli of radio Maisha. Ethuron was accused of destroying a TV camera worth 230,000 Kenya shillings belonging to Emmanuel Kiplangat Cheboit of Citizen TV. The three suspects pleaded not guilty and were released on a cash bail of 100,000, 30,000 and 50,000 respectively.

Media shutdown and threats of legal or other action

On 30 January Communications Authority of Kenya (CA) switched off the signals of four privately owned national TV stations over the stations' decision to air live the Opposition leader Raila Odinga's 'Swearing in Ceremony' at Uhuru Park. The first to go off air was *NTV* owned by Nation Media Group followed by *Citizen TV* of Royal Media Services Limited, and two hours later *KTN News*, which was still relaying live updates from the city's historical grounds was taken off air. Two TV stations *NTV* and *KTN* were however switched back on air after 7 days of a government-enforced shutdown. *Citizen TV*, and its sister vernacular *Inooro TV* stations were restored on air after ten days of shutdown.

The shutdown remained effective despite the High Court order requiring the Communications Authority of Kenya to switch the affected stations back on air with immediate effect. The government never bothered to explain why they had not complied with order instead Mwenda Njoka, a spokesman for the ministry of interior, one of the parties named in the order, said the government could appeal since their representatives had not been present at the court hearing where the order was issued.

There were also several threats of shutdowns from government officials in the months running up to this:

- On 29 July 2017 the ICT Cabinet Secretary Joe Mucheru threatened to shutdown any media house to defy the government order not to release parallel presidential results, while addressing the public at Ngangarithi AIPCA church in Nyeri County.
- On 13 August 2017 Siaya Senator James Orengo called for aboycott of the Nation Newspaper and the Nation Television over claims that the company was biased towards the opposition political outfit, NASA. (He later rescinded the claim saying the coverage had improved).⁷

ARTICLE 19 documented 12 cases of threats of legal or other non-violent action against journalists in the reporting period, including:

- On 7 January 2018, Justus Wanga of Sunday Nation was threatened with being fired by the Deputy President's spokesman David Mugonyi. This was after an

⁷ <http://ntv.nation.co.ke/news/national/2725528-4090314-36cqumz/index.html>

article written by Wanga suggested a split between the Deputy President and President Uhuru Kenyatta over the new Cabinet line-up.

- On 13 August 2017 Siaya Senator James Orenge called for a boycott of the Nation Newspaper and the Nation Television over claims that the company was biased towards the opposition political outfit, NASA. (He later rescinded the claim saying the coverage had improved).⁸
- And on 9 October more than 10 journalists were told by anti-riot police officers to leave a venue where supporters of the opposition coalition, NASA, were converging to start post-election protest in Kisumu County. The police threatened journalists with dire consequences should they defy the order to leave that venue with immediate effect.
- On 17 June 2017 Businessman Ahmed Khasam threatened to sue *Nation Media Group* and two of its journalists, John Ngirachu and John Kamau, over a story which linked him to a UK printing firm that allegedly bribed Kenya's electoral commission bosses. The article had been published in the *Sunday Nation* of 11 June 2017.⁹

⁸ <http://ntv.nation.co.ke/news/national/2725528-4090314-36cqumz/index.html>

⁹ https://www.the-star.co.ke/news/2017/06/17/nation-stares-at-court-battle-over-ballot-papers-story_c1581244

Recommendations

To the President and Government of Kenya

- Publicly restate the government's commitment to upholding freedom of expression, media freedom and safety of journalists at all times.
- Ensure full respect for international law on freedom of expression by allowing full, open reporting and commentary on any issues of pressing public interest, including security, corruption, and accountability for past election-related violence.
- Publicly condemn all physical attacks, killings, threats, harassment, obstruction, intimidation and arbitrary arrests of journalists and bloggers, and direct government officials and security forces to end harassment, threats or physical attacks against journalists and bloggers.
- Direct the inspector general of police to ensure prompt, thorough, independent and effective investigation of attacks, including killings and threats against journalists and bloggers, and to adopt a plan that to address the failure in adequately investigating existing cases.
- Amend existing laws, including the Information and Communications Act, Media Council of Kenya Act and Security Laws Amendment Act, and administrative measures introduced since 2013, to bring them into line with Kenya's obligations under international law regarding freedom of expression.
- Ensure that all laws enacted before the passage of the 2010 constitution such as the Official Secrets Act, Preservation of Public Security Act, and the penal code are amended or repealed to meet Kenya's international legal obligations.
- Ensure all government agencies, including the Government Advertising Agency, do not use threats of loss of government-sponsored advertising in exchange for favorable coverage or as punishment for critical reporting.
- Ensure that officials, regardless of rank or position, who threaten, harass, or arbitrarily arrest individuals on the basis of unlawfully intercepted or acquired information are appropriately disciplined or prosecuted.

To the Inspector General of Police, National Police Service Commission, Independent Policing Oversight Authority

- Direct all police officers, particularly those attached to county offices, to ensure respect for media freedom.
- Investigate all reported cases of attacks, threats, and harassment of journalists and ensure those found responsible are appropriately held to account.
- Investigate police officers involved in intimidation, threats, arbitrary arrests, and physical attacks, targeting of journalists and bloggers, and appropriately refer cases for disciplinary measures or prosecution.
- Investigate any reported cases of officials, regardless of rank or position, threatening, harassing or arbitrarily arresting individuals based on unlawfully intercepted or acquired information, and appropriately discipline or prosecute those responsible.

To the Parliament of Kenya

- Amend the penal code, the Preservation of Public Order Act, the Official Secrets Act, the Prevention of Terrorism Act, and other laws to bring them into line with Kenya's obligations under international law regarding freedom of expression.
- Review laws establishing all official media regulatory bodies, such as the Media Council of Kenya and Communications Authority, to ensure they can provide oversight free from government interference.
- Enact protections to the right to privacy to prevent abuse and arbitrary use of surveillance, national security, and law enforcement powers as guaranteed by international law applicable to Kenya. Ensure surveillance occurs only as provided by law, is necessary and proportionate to achieve a legitimate aim, and is subject to judicial and parliamentary oversight.
- Enact legislation to regulate the use of personal information that may be collected by state agencies and to guarantee the right of individuals to request any information the state may collect about them.

