



August 24, 2018

The Honorable Donald J. Trump  
President  
United States of America  
1600 Pennsylvania Ave, N.W.  
Washington, D.C. 20500

H. E. The Hon. Uhuru Kenyatta, C.G.H.,  
President  
Kenya  
State House, PO Box 40530  
Nairobi, Kenya

**Re: August 27 White House meeting**

Dear President Trump and President Kenyatta:

On behalf of Amnesty International's seven million members and supporters worldwide, we urge you to address these pressing human rights concerns at your upcoming August 27 White House meeting:

- I. Refugee rights
- II. Threats to civic space for citizens and civil society organizations
- III. Lack of accountability for security forces abuses
- IV. Forced relocations and evictions
- V. Accountability for drone Strikes

**I. Refugee Rights**

Kenya and the U.S. have long played critical roles in the global response to the needs of displaced populations. The U.S. has been one of the largest supporters of humanitarian aid through the delivery of emergency assistance, financial support of refugee camps around the world and through the US refugee resettlement program.

**Kenya's Treatment of Refugees**

For decades, Kenya has hosted some of the largest refugee camps in the world including the Dadaab and Kakuma camps. As of the end of January 2018, Kenya was hosting an estimated 159,000 IDPs<sup>1</sup> and 486,460 refugees. They include from Burundi, the Democratic Republic of Congo, Ethiopia, Eritrea, Sudan, Rwanda, Somalia and Uganda.<sup>2</sup>

In 2015, the Kenyan government threatened to close the Dadaab refugee camp and disband the Department of Refugees Affairs (DRA), the institution responsible for all administrative matters concerning refugees in Kenya. This

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<sup>1</sup> <http://www.internal-displacement.org/countries/kenya>

<sup>2</sup> <http://www.unhcr.org/ke/figures-at-a-glance>

unlawfully pressured and forced many people to return to Somalia<sup>3</sup>. In February 2017, the High Court of Kenya ruled that forced repatriation of Somali refugees, closure of the Dadaab refugee camp and disbandment of the DRA were unconstitutional measures<sup>4</sup>. While we are pleased that the government did not close the camp, we are deeply concerned that new refugees and returnees are still being denied registration and identity documents.

Kenya also practices a strict encampment policy limiting the freedom of movement for refugees which prevents refugees to explore opportunities to be self-reliant and seek medication in other cities in Kenya. Refugees in Kakuma and Dadaab camps continue facing challenges in seeking approval to temporarily move in and out of the camps. The challenges include long waiting periods and sometimes rejections. Those who move out of the camp continue facing police harassment, intimidation, detention and prosecution both as they travel and in their destination cities.

**Recommendations to Kenya Government: The government should:**

- Offer protection to all refugees in Kenya and ensure that new arrivals are promptly registered and given valid documentation to stay in Kenya with a secure legal status.
- Publicly declare that all refugees – including people from Somalia – can continue enjoying asylum status and will not be pressured or forced to return to their countries of origin in violation of international law.
- Respect the freedom of movement of all refugees as it is their right, as well as a critically needed means of achieving self-reliance.
- Protect refugees in Kenya from all forms of police harassment and intimidation.

**United States' Treatment of Refugees**

The U.S. has historically been a leader in the humanitarian arena both in terms of political and financial support for international needs through its refugee resettlement programs in the United States. Now more than ever, the U.S. must provide sustained leadership and robust funding for humanitarian aid to protect and support displaced populations worldwide. This includes funding and support for international efforts as well as the U.S. Refugee Admissions Program, an integral part of the international protection framework.

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<sup>3</sup> <https://www.amnesty.org/en/latest/news/2016/11/kenya-government-officials-coercing-refugees-back-to-war-torn-somalia/>

<sup>4</sup> <http://kenyalaw.org/caselaw/cases/view/131173>

**Recommendations to U.S. government: The U.S. should:**

- Admit at least 75,000 asylum seekers in Fiscal year 2018-19 in light of worldwide needs and U.S. capacity.
- Continue to strongly support multilateral efforts to provide humanitarian assistance to refugees and internally displaced people.
- Support efforts by the U.N. to find durable solutions for refugees and IDPs.<sup>5</sup>
- Fund civil society organizations working to provide assistance to refugees in Kenya.
- Work with the Kenyan government to uphold the rights and security of all refugees until they may safely return to their home country voluntarily.

**II. Threats to civic space for citizens and civil society organizations**

Many non-governmental organizations working on abuses by security forces and seeking accountability for human rights violations especially during and post 2017 general elections have faced restrictions and harassment including illegal raids and threats of closure.

The Public Benefit Organization Act 2013, which aims at ensuring a transparent and efficient regulation of civil society in Kenya, is yet to be commenced and implemented five years after it was signed into law. In those years, there have been concerning patterns of intimidation and harassment aimed at silencing dissenting voices and attacking civil society organizations. In 2014-2015, more than 1,500 NGOs were threatened with deregistration by the NGO Coordination Board. Several organizations have also been accused of links with terrorism, and their bank accounts have been frozen and the work permits of foreign employees arbitrarily withdrawn.

The electoral period last year also saw a closing of civic space and attacks on human rights defenders. Immediately after the declaration of the 8 August presidential results, the NGOs Co-ordination Board took steps to deregister and raid the Kenya Human Rights Commission (KHRC) and the African Centre for Open Governance (AfriCOG), both of which have been critical of the government and the electoral process. This was also followed by an aggressive social media campaigning against human rights defenders and activists. The judiciary too has endured many instances of intimidation, including from leaders of the ruling Jubilee Party.

The above incidents indicate a systematic crackdown and a continuation of a wider repression of civil society since 2013. The government urgently needs to change course and create a safe and enabling environment for civil society to be able to work without fear of reprisals.

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<sup>5</sup> <http://www.unhcr.org/ke/figures-at-a-glance>

**Recommendations to Kenyan Authorities: The government should:**

- Stop all forms of harassment, intimidation and attacks on civil society organizations and human rights defenders for expressing the right to assembly and expression guaranteed under the constitution.
- Urgently commence and implement the Public Benefits Organization Act of 2013, to ensure a safe and enabling environment for civil society to be able to work without fear of reprisals;
- Ensure that regulatory bodies such as the NGO Coordination Board adhere to due process in all matters involving freedoms of expression, assembly and association in accordance with the Constitution of Kenya.

**III. Lack of Accountability for Security Forces Abuses Accountability for Abuses by Kenyan Security Forces**

A joint Amnesty International and Human Rights Watch Report in October 2017 highlights the abuses by Kenyan government officials during and after the closely contested 2017 general elections.

The joint report on the protest and police response after the last election in 2017 found that at least 67 people were killed countrywide during the first round of voting in August, most of them either shot or beaten to death by police. During the second round of voting, approximately, at least 37 people were killed, mostly by police, in Nairobi's Embakasi, Kawangware, Dandora, Mathare, Kibera, Kangemi, Kariobangi, and Riverside neighborhoods. Armed gangs also killed some people they identified by tribe as opposition supporters.

University of Nairobi students clashed with General Service Unit police during a protest outside the university premises against the arrest of member of parliament and former student leader [Babu Owino](#). Owino had apparently been arrested for comments he made about President Kenyatta. Following the protest, the police raided the university buildings and beat students with batons, injuring 27 of them in late 2017.

The police and the military are thought to have participated in the beating and killing of herders and their livestock from the Pokot community. Police killings in Mathare and other informal settlements in Nairobi such as Dandora, Kayole, Huruma, Eastleigh, Kibera, and Kariobangi are still prevalent and are not been investigated. In May 2017, a report by Mathare Social Justice Center, a community based human rights organization, found that between 2016 and 2017 alone, police had extrajudicially killed at least 57 young men and women.

Police and other security forces continue to commit these human rights abuses with complete impunity and no meaningful investigations have been done so far.

### **Recommendations to Kenya Authorities**

- The government should undertake radical police reforms to strengthen command authority over officers, independent oversight and community policing
- The Kenyan government should investigate and prosecute all officers who used excessive force on peaceful protesters during the elections related protests in 2017.
- The president should consider establishing an independent judicial commission of inquiry to examine the activities of police and security forces who have committed human rights abuses in the past five years.
- The United States takes all possible measures to ensure their financial and technical support of security sector reforms in Kenya is guaranteed not to violate human rights by placing human rights conditions as required under US law.
- The U.S. should take steps to facilitate the implementation of the Leahy law and include access for and participation of Kenyan civil society organizations in that process.

### **Accountability for the use of Excessive Force and Use of Lethal Force by U.S. Law Enforcement**

In 2016 Amnesty International USA sent human rights observers to the state of North Dakota, as thousands of people gathered to demonstrate against the construction of the Dakota Access Pipeline. Over the course of several months law enforcement used water cannons, rubber bullets and tear gas as a means to disperse this protest.

While the U.S. maintains a law to track and report the number of deaths that occur annually at the hands of police, it has failed to publicly report this information. The Death In Custody Reporting Act (“DICRA”) was reauthorized in 2014 and requires the government to account for the number of arrest-related deaths and other deaths in custody that occur in the U.S. Nearly four years later, DICRA has not been implemented, and the public continues to rely on media outlets for the number of people killed by police each year, which is estimated at 1,000.

### **Recommendations to U.S. Authorities:**

- Minimize damage, preserve life, and protect uninvolved people. Use force only to the extent necessary, and only when non-or less- violent means have failed or are unlikely to achieve legitimate objective
- The type of equipment used to disperse an assembly must be carefully considered and used only when necessary, proportional, and lawful. Policing and security equipment – such as rubber bullets, tear gas and stun grenades, often described as “less-lethal” weapons – can result in serious injury and even death. Chemical irritants, such as tear gas, should not be used where people are confined in an area and not

in a way that can cause lasting harm (such as at too close range, or directly aimed at people's faces)

- The Department of Justice should ensure the collection and publication of nationwide statistics on police shootings in accordance with DICRA and the Violent Crime Control and Enforcement Act (1994). The data, collection must be disaggregated based on race, gender, age, nationality, sexual orientation, gender identity and indigenous status.

#### **IV. Forced Evictions**

Forced evictions is a pressing human rights issue for indigenous, forest dwelling and urban communities within Kenya. Families in Embobut forest, in the North Rift Valley of Kenya, lost their homes, livelihoods, and access to cultural practices due to forced and violent evictions. This year, the Kenya Forest Service (KFS) have continued to carry out forced evictions burning 341 houses belonging to the Sengwer people. Last year, the African Court on Human and Peoples' Rights found that the government of Kenya had violated the human rights of the Ogiek by evicting them from their ancestral lands in the Mau Forest.

We are concerned by the denial of the right to adequate housing in at least ten communities affected by road, railway and other infrastructural projects. No less than ten forced evictions have taken place in Nairobi and other urban cities this year, affecting the lives and livelihoods of over 20,000 people. Without proper housing, these families have been rendered homeless and at risk to further human rights abuses.

#### **Recommendations to the Kenyan Authorities**

- Immediately cease all evictions, and arrests of Sengwer for the sole reason of being present in Embobut forest.
- Ensure that all Sengwer who have been evicted are allowed to return to their places of dwelling in Embobut forest in safety and dignity and have access to effective remedies including a public apology, reparation, compensation and guarantees of non-repetition.
- Invest in humane ways of relocating communities and introduce mass housing consistent with the Internally Displaced Persons Act, Guidelines against Forced Evictions and the Housing Pillar.

#### **V. Accountability for Drone Strikes by the U.S.**

The past few years have seen an alarming growth in the use of armed drones by states including the USA. The circumstances in which they are deployed remain shrouded in secrecy. The use of these drones has created a situation in which the whole world can be treated as a battlefield, and virtually anyone can be categorized as collateral damage. Armed drones have been used to

carry out unlawful killings with minimal oversight and accountability, and with devastating consequences for civilians.

The reach of the US lethal drone program extends to Pakistan, Somalia, Libya, Yemen, Iraq and Syria and including areas outside of armed conflict. In 2018 the online news magazines *The Intercept* and *la Repubblica* [reported](#) that the U.S. had conducted 550 drone strikes in Libya since 2011. On March 5, 2016 the U.S. launched a drone [strike](#) that killed 150 people at a training camp operated by Al Shabab in Somalia and another [strike](#) that killed three members of Al Shabab on February 22, 2018.

**Recommendations to the United States government:**

- Establish or assign a dedicated investigative entity – for example, an inspector general or special prosecutor – to independently, impartially and fully investigate all potentially unlawful deaths caused by drone strikes. The unit should have access to classified information, and adequate independence and authority, including the ability to compel witnesses and evidence, and to report publicly on their findings.
- Ensure that victims of unlawful drone strikes, including family members of victims of unlawful killings, have effective access to remedies, including in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- Cease to invoke the “global war” doctrine, and fully recognize and affirm the applicability of international human rights obligations to all US counter-terrorism measures, including those outside US territory.
- Ensure that any use of lethal force outside of specific recognized zones of armed conflict complies with international human rights standards, including as set out in UN law enforcement standards.

We look forward to discussing our recommendations, and we hope to learn more about the planned visit and how both governments can work together to address these issues. Our staff in Nairobi and Washington, D.C. will follow up to set up meetings. Please contact Adotei Akwei, Amnesty International USA’s Africa Advocacy Director at [aakwei@aiusa.org](mailto:aakwei@aiusa.org) or 202/509-8148 or the undersigned to do this.

Sincerely,

Margaret Huang  
Executive Director, Amnesty International USA

Irūngū Houghton  
Executive Director, Amnesty International Kenya