



# **KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

**METHODOLOGY FOR COLLECTING DATA ON SDG**

**16.10.1**

**PROTECTION OF JOURNALISTS MEDIA PERSONNEL,  
TRADE UNIONISTS AND HUMAN RIGHTS ADVOCATES**

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# National Implementation Framework for SDG Indicator 16.10.1:

- **National legal and policy framework on human rights defenders:** The Bill of Rights under the Constitution of Kenya guarantees rights that are especially relevant for the protection of human rights defenders: These include freedom from torture and cruel, inhuman or degrading treatment or punishment; right to life; equality and freedom from discrimination;

right to freedom of expression; right to access information; right to freedom of association; right to assembly; right to make political choices; freedom of movement; access to justice; rights of arrested persons and rights of detained persons.

**Relevant Articles: Article 21 (1), Article 25, Article 26, Article 27, Article 28, Article 29, Article 31 , Article 32, Article 34, Article 34 (3), Article 35, Article 49 (1)**



## Statutory provisions on human rights defenders

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- **Access to Information Act, 2016:** The Act enshrines the right of every citizen to access information held by the State or information held by another person that is required for the exercise or protection of any right or fundamental freedom;
- **Prevention of Torture Act, 2017:** The Act provides for the prevention, prohibition and punishment of acts of torture and cruel, inhuman or degrading treatment or punishment; and provides for reparations to victims of torture and cruel, inhuman or degrading treatment or punishment.
- **Witness Protection Act, 2006:** The Act establishes a Witness Protection Agency whose purpose is to “provide the framework and procedures for giving special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies”.
- **Victim Protection Act, 2014:** The Act provides for the protection of victims of crime and abuse of power and seeks to provide them with better information and support services;

## Statutory provisions on human rights defenders

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- **Criminal Procedure Code (CAP. 75):** The Code governs the conduct of criminal proceedings and sets out the law regulating arrests, issuance of bail and bond and conduct of investigations and criminal trials.
- **Legal Aid Act, 2016:** The Act establishes the National Legal Aid Service whose functions are, among others, to establish and administer a national legal aid scheme that is affordable, accessible, sustainable, credible and accountable;
- **Fair Administrative Action Act, 2015:** The Act recognizes the right of every person to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

## Statutes containing provisions which are prone to abuse by officials, thereby threatening the lives, liberty and mission of human rights defenders.

- **Official Secrets Act:** Section 3 (1) (C) of the Act stipulates that “any person who, for any purpose prejudicial to the safety or interests of the Republic obtains, collects, records, publishes or communicates in whatever manner to any other person any code word, plan, article, document or information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or disaffected person, shall be guilty of an offence.”
- **Public Service Code of Conduct and Ethics, 2016:** Section 23 (3) of the Code obligates a public officer to take all reasonable steps to ensure that confidential or secret information or documents entrusted to his or her care are adequately protected from improper or inadvertent disclosure
- **Computer Misuse and Cybercrimes Act, 2018:** Sections 22 and 23 of the Act prohibit the intentional publication of false information that is calculated or results in panic, chaos or violence among citizens of the Republic, or which is likely to discredit the reputation of a person
- **Kenya Information and Communications Act, 1998:** Section 29 of the Act provides that “a person who by means of a licensed telecommunication system: a) sends a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or b) sends a message that he knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or to both”



## STATUTES CONTAINING PROVISIONS WHICH ARE PRONE TO ABUSE BY OFFICIALS, THEREBY THREATENING THE LIVES, LIBERTY AND MISSION OF HUMAN RIGHTS DEFENDERS:

- **Non-Governmental Organizations Coordination Act, 1990:** Section 14 of the Act allows the Board to refuse registration of an NGO if it: is satisfied that its proposed activities or procedures are not in the national interest; or it is satisfied that the applicant has given false information on the requirements of registration; or it is satisfied, on the recommendation of the Council, that the applicant should not be registered. In addition, Section 16 of the Act empowers the Board to revoke an NGO's certificate of registration if it is satisfied that the terms or conditions attached to the certificate have been violated; or the organisation has breached the Act; or the Council has submitted a satisfactory recommendation for the cancellation of the certificate.
- **Public Order Act (CAP. 56):** Section 5 (2) of the Act obligates a person intending to convene a public meeting or public procession to notify the regulating officer of such intent at least three days but not more than fourteen days before the proposed date of the public meeting or procession
- **Penal Code:** Section 78 of the Code defines an unlawful assembly as one where "three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace." Section 79 of the Code provides that a person found guilty of participating in an unlawful assembly is liable to imprisonment for one year. Section 83 of the Code stipulates that a person who continues to participate in a riot after a proclamation is made commanding persons engaged in the riot or assembly to disperse, is guilty of a felony and is liable to life imprisonment.
- **Prevention of Terrorism Act, 2012:** Section 46 of the Act allows the refusal of applications for registration, and the revocation of registration, of associations linked to terrorist groups.

## **International legal framework on human rights defenders:**

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- This Framework adopts by way of reference the international legal standards on the protection of human rights defenders, beginning with the principle that everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.



## Mandate and rationale for contextualizing SDG indicator 16.10.1:

- Kenya has been a long-standing champion of the SDGs and has committed to putting in place measures to implement the same;
- The government further identified the key indicators that they would monitor as SDGs are implemented and those identified are tier 1 and 2 indicators. However, the government has not prioritised monitoring those indicators where there is no established methodology or standards also known as tier 3 indicators. SDG 16.10.1 is one of the indicators not prioritised for monitoring and reporting by the government of Kenya;
- Kenya is not monitoring the implementation of this SDG for reasons that the methodology is yet to be developed and or tested. In Kenya Civil Society organisations have been collecting information on the various aspects of the SDG. However, the information is not collected in a coordinated manner and with no agreed methodology meaning the information is only for use by the CSOs and is not recognised by the government
- Other Government Agencies such as KNCHR and IPOA also collect information on some of the issues in the SDG, however again they each use their own methodology and the information is used internally and does not form part of the official data by the KNBS;
- Chapter Four of the Bill of Rights in the Kenyan Constitution recognizes and protects human rights and fundamental freedoms to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings;
- SDG Indicator 16.10.1 is aligned to this chapter of the constitution as it seeks to measure enjoyment of fundamental freedoms such as freedom of opinion, freedom of expression and access to information, the right to peaceful assembly and freedom of association on the premise that <sup>23/05/2023</sup> <sup>8</sup> killing, enforced disappearance, torture, arbitrary detention, kidnapping and other harmful act against journalists, trade unionists and human rights defenders have a chilling effect on the exercise



## Main Elements of the National Implementation Framework:

- **National custodian agency :** The Kenyan National Commission on Human Rights be formally recognised and designated as the national custodian of SDG indicator 16.10.1. As such, KNCHR is responsible for compiling and verifying country data and metadata, and for submitting the data to the Kenya National Bureau of Statistics.
- **Data Partners:** KNCHR will integrate data on relevant cases provided by State bodies and civil society organisations, provided that these data were collected and processed in accordance with this framework. The partners will include:
  - Kenya National Commission on Human Rights, Independent Policing Oversight Authority, National Crime Research Centre, The Judiciary , The Office of the Directorate of Public Prosecutions, The National Police Service, Defenders Coalition, Independent Medical Legal Unit, Kenya Human Rights Commission , Muslims for Human Rights , HAKI AFRICA, Media Council of Kenya, Central Organization of Trade Unions and Social Justice Centres Working Group
  - This list may be amended by agreement of KNBS and KNCHR after proper consultation with relevant stakeholders.

## Definition of terms:

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- Journalist;
- Trade Unionists;
- Human Rights Defenders;
- Killing;
- Enforced Disappearances
- Torture;
- Arbitrary Detention;
- Kidnapping;
- Verified cases;
- Other Harmful Acts



## Methodological Elements:

- **Calculation method:** The indicator is calculated as the total count of victims of reported incidents occurring within the preceding 12 months. For reporting purposes, the recorded offences will be ordered taking into account a hierarchy of violations or abuses drawing on the “most serious offence” rule commonly applied in crime statistics:
  - 1. *Killing*
  - 2. *Torture*
  - 3. *Enforced disappearance*
  - 4. *Arbitrary detention*
  - 5. *Kidnapping*
  - 6. *Other harmful acts*
- **Minimum Data Disaggregation -**
  - In reporting and disseminating data under this indicator, KNCHR and KNBS will provide the following minimum data disaggregation
    - Sex: Male, Female, Intersex
    - Age groups: Actual or Approximate Age and Age Groups
    - Types of act
    - Perpetrator status: State Actor, Non-State Actor, Unknown
    - Geographic location of the incident: City or Municipality, County, Region

## METHODOLOGICAL ELEMENTS:

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- Disability including Albinism: (according to categories in KNCHR CMS)
- Nationality or Lack of Nationality: (according to categories in KNCHR CMS)
- Ethnicity: (according to KNCHR CMS categories)
- Religious affiliation: (to be defined in a separate guidance by KNCHR)
- Thematic area of work of the victim: (to be defined in a separate guidance by KNCHR)



## Methodological Elements:

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### Data integration and case deduplication:

- KNCHR will provide, in accordance with an agreed schedule, to KNBS descriptive statistics of the indicator based on an integrated dataset comprising different sources and using the standard definitions, data collection methods, reference period, counting units and counting rules agreed to between KNCHR, KNBS and data partner.
- KNCHR, in consultation with KNBS, will devise and continuously maintain and improve a standard reporting form or template with required and desirable fields.
- Subject to deduplication to ensure that no victims are reported more than once for each act, the following conventions for verification are hereby agreed to:
  - KNCHR own data - verified by KNCHR
  - Data from government agencies accepted by KNCHR as is, provided sufficient evidence is provided
  - Data from civil society organisations may be verified by KNCHR

## Methodological Elements:

- **National reporting of data:** KNBS shall develop descriptive statistics out of the data provided by KNCHR in the National SDG Reporting Platform and other official publications. KNCHR shall report the data through its Annual Report, reporting to treaty bodies, etc., and may provide them as inputs to the President's State of the Nation Address, etc.
- **Global data exchange with OHCHR :** In coordination with KNCHR, KNBS will be responsible for regular and timely data exchanges with the Office of the United Nations High Commissioner for Human Rights, the international custodian agency of this indicator, specifically with the Focal Point within the Human Rights Indicators and Data Unit, Methodology Education and Training Section. The Senior Human Rights Adviser at the Office of the UN Resident Coordinator in Nairobi will be copied to such data exchanges.



# Thank you

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- QUESTIONS AND ANSWER SESSION
  - PLENARY