

Amnesty International Report 2017/18 - Kenya

Publisher [Amnesty International](#)

Publication Date 22 February 2018

Cite as Amnesty International, *Amnesty International Report 2017/18 - Kenya*, 22 February 2018, available at: <https://www.refworld.org/docid/5a9938d94.html> [accessed 14 February 2019]

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Republic of Kenya

Head of state and government: **Uhuru Muigai Kenyatta**

Police used excessive force against opposition protesters following the elections, leaving dozens dead. The ruling party made statements threatening the independence of the judiciary after the Supreme Court annulled the election results. The NGOs Coordination Board threatened organizations working on human rights and governance with closure and other punitive measures after they criticized the electoral process. Prolonged strikes by medical workers had an impact on access to public health care, disproportionately affecting the poor.

BACKGROUND

The general election held on 8 August was contested by the ruling Jubilee Party, led by incumbent President Kenyatta, and the opposition coalition, the National Super Alliance (NASA), led by former Prime Minister Raila Odinga. On 11 August, the Independent Electoral and Boundaries Commission declared that President Kenyatta had won 54% of the vote and Raila Odinga 44%. NASA rejected the presidential results citing irregularities in the counting process, and the way the results were transmitted. It filed a petition against the results with the Supreme Court on 18 August.

On 1 September, the Court ruled that the election results should be annulled because they were "invalid, null and void", and ordered a new presidential election to take place. NASA said they would not participate unless their demands were met including, among other things, the appointment of new returning officers in all 291 constituencies, and the engagement of independent international experts to monitor the electoral information and communication technology system. On 10 October Raila Odinga announced his withdrawal from the contest because the Commission had not made the necessary reforms.

The election re-run was planned for 26 October. On 30 October, the Commission declared that Uhuru Kenyatta had won with 98% of the vote from a turnout of under 40% – less than half the turnout recorded in August. On 31 October, Raila Odinga called for a "national resistance movement" and the formation of a "people's assembly" to bring civil society groups together to "restore democracy".

JUSTICE SYSTEM

High-ranking members of the Jubilee Party verbally attacked the Supreme Court after its 1 September ruling annulling President Kenyatta's August election victory. On 2 September, President Kenyatta announced that there was a problem with the judiciary. A record of telephone calls by one Court judge appeared in the media, prompting him to pursue legal action on defamation grounds against the Senior Director of Innovation, Digital and Diaspora Communication in the Office of the President.

On 24 October, an unidentified gunman shot and injured the Court Deputy Chief Justice's driver in the capital, Nairobi. The incident happened a day before the Court's ruling that there would be an election re-run on 26 October.

EXCESSIVE USE OF FORCE

In the run-up to the 8 August election, the police classified opposition stronghold areas of Nairobi, including Mathare, as likely "hotspots" for election-related violence.

In the period following the August election and the Supreme Court's decision to annul it, supporters of both parties took to the streets in protest.

The police used excessive force to disperse protesters who supported the opposition party and demonstrated against the electoral process, including with live ammunition and tear gas. Dozens died in the violence, including at least 33 people who were shot by police and of whom two were children. Meanwhile, pro-government protesters were permitted to demonstrate without interference.

On 19 September, Jubilee Party supporters protested outside the Supreme Court in Nairobi against its decision to annul the election; they accused the Court of "stealing" their victory.

They blocked a main highway and burned tyres. There were similar demonstrations in the towns of Nakuru, Kikuyu, Nyeri and Eldoret. The demonstrators, mostly young people, accused the judges of making an illegal judgment.

On 28 September, University of Nairobi students clashed with General Service Unit police during a protest outside the university premises against the arrest of MP and former student leader Paul Ongili. Paul Ongili was arrested the same day for abusive remarks he allegedly made about President Kenyatta in connection with the election. Following the protest, the police raided the university buildings and beat students with batons, injuring 27 of them. The Inspector General of Police said the university administration had invited the police to enter after the protesting students stoned motorists. The university Senate then closed the university on 3 October; it had not reopened by the end of the year.

Following the 26 October election, there were further killings when police fired live ammunition at protesters. The real number of deaths during this period was unknown; relatives of victims did not report the killings for fear of reprisals from the police.

FREEDOM OF ASSOCIATION

The authorities continued to use legal and administrative measures to restrict the activities of civil society organizations working on human rights and governance. In May the Nairobi High Court ruled that the government should publish the Public Benefit Organization (PBO) Act 2013. If implemented, the law could improve the working environment for civil society organizations and NGOs. It contains provisions, in line with the Constitution, guaranteeing the right to freedom of association. However, the authorities continued to use the Non-Governmental Organization (NGO) Law, which restricted the full realization of these rights.

Between 14 and 16 August, the NGOs Coordination Board (within the Ministry of Interior and Coordination of National Government) accused two human rights organizations – the Kenya Human Rights Commission and the Africa Centre for Open Governance (AfriCOG) – of financial and regulatory impropriety. It called upon the Kenya Revenue Authority, the Directorate of Criminal Investigations and the Central Bank of Kenya to take action against them, including by freezing their accounts and arresting and prosecuting AfriCOG's directors and board members.[1] On 16 August, the NGOs Coordination Board threatened to arrest the heads of both organizations, as well as a former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, who also served on AfriCOG's board of directors. The same day, Kenya Revenue Authority officials, accompanied by police, attempted to raid AfriCOG's offices with irregular search warrants. They stopped the raid on the orders of an official in the Ministry of Interior and Coordination of National Government who also suspended the closure threat for 90 days. AfriCOG and the Commission had been at the forefront of those exposing the electoral irregularities.

REFUGEES AND ASYLUM SEEKERS

Kenya continued to host almost 500,000 refugees, most of whom resided in Dadaab refugee camp in Garissa County, and Kakuma refugee camp in Turkana County. Other refugees were located in Nairobi. The majority of refugees in Dadaab were from Somalia; the majority of refugees in Kakuma were from South Sudan. By September, appeals for international support from UNHCR, the UN refugee agency, for the regional refugee crisis had secured only 27% of the necessary funding.

In February, the High Court declared the 2016 government directive to close Dadaab refugee camp by May 2017 to be in violation of the Constitution and Kenya's obligations under international law with regard to the principle of *non-refoulement* and the prohibition of discrimination on grounds of race or ethnicity. Thus, Dadaab refugee camp remained open. The ruling also stated that the government's move to revoke the assumed refugee status of Somalis who had fled to Kenya was unconstitutional and violated rights guaranteed in national and international instruments.

The authorities continued the voluntary repatriation of Somali refugees, initiated in 2014 under the Tripartite Agreement framework. Between May 2016 and September 2017, over 70,000 refugees were repatriated from Dadaab to Somalia.

On 17 February, the Court of Appeal upheld a 2013 High Court ruling which quashed government directives to round up all refugees living in urban areas and relocate them to refugee camps, as part of a plan to repatriate them.

On 25 April, a High Court in Garissa ordered the deportation of 29 Somali asylum-seekers to Somalia. The group had been arrested in Mwingi in March and charged before a Magistrate Court with being in Kenya unlawfully. The magistrate ordered that they be taken to Dadaab refugee camp and registered by the Refugee Affairs Secretariat (RAS); however, the RAS officer refused to register them. The magistrate's order was ultimately quashed by the High Court and all 29, including 10 children, were deported to Somalia on 4 May 2017.

INDIGENOUS PEOPLES' RIGHTS

Elias Kimaiyo, Indigenous Sengwer community leader and human rights defender, suffered a broken collar bone when he was beaten and shot at by a Kenya Forest Service guard in Embobut Forest on 5 April. He was attacked when he photographed guards burning Sengwer huts in violation of a 2013 injunction issued by the High Court of Eldoret to stop arrests and evictions of the Sengwer people.

On 26 May, the AU African Court on Human and Peoples' Rights ruled that the government had illegally evicted Ogiek Indigenous People from the Mau Forest, and failed to substantiate its claim that the eviction would serve to conserve the forest.

RIGHT TO HEALTH

The strike by doctors in public hospitals which began in December 2016 ended in March 2017. The strike followed the breakdown, after several years, of negotiations between the government and the Kenya Medical Practitioners, Pharmacists and Dentist Union regarding the Collective Bargaining Agreement signed in 2013. The strike took place against a background of alleged massive financial corruption at the Ministry of Health. It was followed in June by a strike by public hospital nurses which lasted until November, when the government and the nurses' union signed the 2013 Agreement.

The strikes adversely affected public health services across the country, and disproportionately impeded access to health care for people who could not afford private medical insurance cover, particularly those living in informal settlements.

[1] Kenya: Attempts to shut down human rights groups unlawful and irresponsible ([News story](#), 15 August)