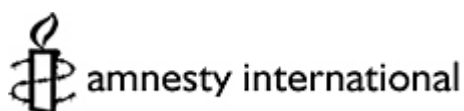


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Amnesty International Annual Report 2012 - Kenya

Head of state and government: **Mwai Kibaki**

Death penalty: **abolitionist in practice**

Population: **41.6 million**

Life expectancy: **57.1 years**

Under-5 mortality: **84 per 1,000**

Adult literacy: **87 per cent**

Laws bringing into effect some of the provisions of the Constitution were enacted, new institutions created and public officials appointed. There were proposals for further legal and institutional reforms. However, there was continued impunity for past and current human rights violations, including unlawful killings and other violations by the police, and crimes committed during the post-election violence of 2007-8.

Background

The Commission on the Implementation of the Constitution, established to advise on and oversee the process of implementing the 2010 Constitution, started functioning on 4 January. Various laws were proposed by the government, considered by the Commission and passed in Parliament. These included the Judicial Service Act and the Vetting of Judges and Magistrates Act, which provide a legal framework for judicial reforms – including the establishment of a new Judicial Service Commission (JSC) responsible for hiring and setting the terms and conditions of judicial officers. The law on vetting established a board to investigate the integrity of current judicial officers. Following a public recruitment process led by the JSC, a new Chief Justice and Deputy Chief Justice were appointed to head the judiciary, along with five judges of the new Supreme Court – Kenya's highest judicial body. The Chief Justice, Deputy Chief Justice and Director of Public Prosecutions were sworn into office in June.

Two laws providing a new legal framework for fresh appointment of members of the Kenya National Commission on Human Rights (the state human rights institution) and the National Gender and Equality Commission were also enacted. Other laws passed during the year established a new anti-corruption commission, a commission on the administration of justice, and the Independent Electoral and Boundary Review Commission – the body tasked with running elections and reviewing electoral and administrative boundaries.

At the end of the year several bills were undergoing public debate. These included draft laws on the structure and authority of county governments established under the Constitution.

Impunity

Post-election violence

Although the government stated several times that investigations were continuing into crimes and human rights violations, including possible crimes against humanity, allegedly committed during the post-election violence, steps were not taken to bring perpetrators to justice.

The CEDAW Committee, in its Concluding Observations issued in April following a consideration of Kenya's record in implementing CEDAW, expressed concern that perpetrators of sexual and gender-based violence, including rape and gang rapes committed during the post-election violence, remained unpunished.

Police and security forces

There were incidents of unlawful killing and torture and other ill-treatment by the police and other security personnel.

- In January, plain-clothes police officers shot dead three men in Nairobi after ordering them out of their car. According to eyewitnesses, the men had surrendered before being shot. After the incident the police claimed the men were armed criminals. Although the Minister of Internal Security announced that the officers involved had been suspended, the government did not specify any steps it had taken to bring them to justice.

The authorities took no steps to bring to justice police officers and other security personnel who had reportedly carried out extrajudicial executions and other unlawful killings in recent years.

- Police halted their investigations into the 2009 killings of Oscar Kingara and Paul Oulu, two human rights activists, by unknown gunmen.

Key laws setting the framework for police reform were passed. These included the Independent Policing Oversight Authority Act (establishing an oversight authority to deal with complaints against the police), the National Police Service Act (providing a new legal framework for policing) and the National Police Service Commission Act (establishing a Police Service Commission). As of December, the process of appointing members of the Police Service Commission was ongoing.

International justice

On 8 March, the International Criminal Court (ICC) summonsed six Kenyan citizens believed to be responsible for crimes against humanity committed during the post-election violence. In April, the six men appeared before the Court in two separate cases. Confirmation hearings were conducted by the Pre-Trial Chamber in September and October to determine whether there was evidence to refer the cases to full trial. The Court's decision was pending at the end of the year.

In April, the government requested that the cases be declared inadmissible before the ICC, because amendments to Kenyan law, including the adoption of a new Constitution and the enactment of the International Crimes Act, meant that "national courts were now capable of trying crimes from the post-election violence, including the ICC cases." The Pre-Trial Chamber rejected the application, maintaining that it had no evidence of ongoing investigation and prosecution of the six suspects, and that a promise to carry these out could not be used to pre-empt the Court's jurisdiction over the cases.

In March, the government unsuccessfully sought a consideration by the UN Security Council for a deferral of the ICC cases.

The government did not act on a parliamentary motion passed in December 2010 that urged it to start Kenya's withdrawal from the Rome Statute and to repeal the International Crimes Act which incorporates the Statute into Kenyan law.

On 28 November, the High Court ruled that the government was obliged to effect the arrest of President al-Bashir of Sudan on the strength of existing ICC warrants for his arrest if he were to visit Kenya in the future. The government announced its intention to appeal against the decision.

Truth, Justice and Reconciliation Commission

The Truth, Justice and Reconciliation Commission (TJRC) conducted country-wide public hearings where individuals testified about alleged human rights violations, the impact of grand corruption, land injustices and other issues that form part of its mandate. The Commission planned to conclude these hearings by the end of January 2012, and conduct thematic hearings during February and March. The final report documenting its findings and recommendations was planned for May 2012. The Commission's work was hampered by insufficient funding.

A tribunal appointed to investigate allegations into the credibility of the Commission's Chair had not started its work by the end of the year; this was due to a pending court case filed by the Chair to stop the tribunal from investigating his alleged complicity in committing past human rights violations that are the subject of the TJRC's mandate. The Chair remained suspended throughout the year.

Violence against women and girls

In its Concluding Observations, the CEDAW Committee expressed concern at the "persistence of adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life." The Committee noted that such stereotypes perpetuate discrimination against women and contribute to the persistence of violence against women as well as harmful practices, including female genital mutilation, polygamy, bride price and wife inheritance. It expressed concern that despite such negative impacts on women, the government "had not taken sustained and systematic action to modify or eliminate stereotypes and negative cultural values and harmful practices."

Housing rights – forced evictions

In September, more than 100 people died after a petrol pipeline exploded in Sinai informal settlement in the industrial area of Nairobi. The resulting fire quickly spread through the settlement due to dense concentration of housing, poor building materials and lack of access roads for emergency services.

In October and November the authorities carried out mass forced evictions and house demolitions in at least five informal and formal settlements in Nairobi, mostly around Jomo Kenyatta International Airport, Wilson Airport and the Moi Air Base. The evictions rendered hundreds of families homeless. According to Kenya Airports Authority officials, the evictions were necessary to reclaim land for the airport to prevent possible air disasters. In most instances residents complained that they had not been given adequate notice of the demolitions, or an opportunity to challenge them or seek alternative housing. Thousands of residents of Kyang'ombe settlement, next to Jomo Kenyatta International Airport, were forcibly evicted from their homes by the police and other personnel acting under the instructions of the Kenya Airports Authority. This was despite an existing temporary court order, filed by a group of residents, pending the outcome of a court case regarding land ownership.

In at least three separate cases during the year, the High Court ruled that the right to adequate housing under Article 43(1) of the Constitution includes a legal prohibition against forced evictions. By the end of the year the government had not fulfilled its 2006 pledge to publish national guidelines on evictions.

Internally displaced people

Government figures released in September indicated that most people displaced as a result of the post-election violence of 2007-8 had returned to their homes, been integrated into various communities or resettled in other parts of the country. Around 158 households remained in transit displacement camps. Local NGOs reported that the official figures excluded hundreds of internally displaced households still living in self-help makeshift camps not recognized by the government. Groups of people internally displaced as a result of the post-election violence complained that official measures to help them, such as subsidies, were inadequate. Thousands of other people remained displaced as a result of ethnic clashes before the 2007-8 violence.

Refugees and asylum-seekers

As of November, more than 152,000 Somali refugees fleeing conflict and drought had arrived in the Dadaab camps in eastern Kenya. In July, the Kenyan government opened the Ifo extension of the camp. However, there remained inadequate space and facilities for the residents of the camps.

In October, the government deployed the Kenyan army in Somalia to fight against the al-Shabab armed Islamist group. Following the intervention, the government stopped the registration of new arrivals in Dadaab by UNHCR, the UN refugee agency, and the transportation of asylum-seekers from the border to Dadaab.

In October, November and December there were a number of grenade and bomb attacks in border towns in north-eastern Kenya and an attack at a public bus park in Nairobi by suspected al-Shabab members and sympathizers. Several people were killed, including a refugee leader in Hagadera camp in Dadaab, and dozens were injured. The government announced it would investigate the attacks.

Death penalty

Courts continued to impose the death penalty. There were no executions.

Some courts ignored the July 2010 decision by the Court of Appeal that the mandatory application of the death penalty was unconstitutional.

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