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[Back to Kenya](#)

KENYA 2021

Police used excessive and sometimes lethal force to break up protests; they unlawfully killed 167 people, including some of those arrested for violating Covid-19 restrictions, and forcibly disappeared 33 people. Incidents of gender-based violence, primarily against women and girls, increased. Courts affirmed the right to housing, but government agencies flouted a presidential moratorium on evictions during the pandemic. A group of LGBTI refugees and asylum seekers were attacked in Kakuma refugee camp. No one was brought to justice for the killing of environmental activist Joannah Stutchbury in July.

Background

The government continued to impose a curfew and restrictions on movement and public gatherings to curtail the spread of Covid-19.

The authorities granted citizenship to 1,649 members of the Shona community in July, ending decades of statelessness. The Shona migrated to Kenya from Southern Africa in 1959 as missionaries but, following Kenya's independence in 1963, were never registered as citizens. An additional 1,200 people of Rwandan descent, who migrated to Kenya for work during the colonial period, and 58 people of Asian descent, were also granted citizenship. In September, parliament recognized the Pemba community as an Indigenous community. These steps added to progress

already made by Kenya over several years to end statelessness for everyone. In 2016, 1,500 members of the Makonde community, who migrated from Mozambique, were also granted citizenship.

Excessive use of force

The brutal response by police officers to protests resulted in human rights violations against demonstrators. While Covid-19 regulations prohibited protests and public assemblies, there were several spontaneous demonstrations against containment measures and the police responded using excessive force. Alex Macharia Wanjiku was shot in Kahawa West, an informal settlement in Nairobi County, while police

dispersed a demonstration against the Nairobi Metropolitan Services. Investigations into the incident by the Independent Policing Oversight Authority (IPOA), an independent civilian body, were not concluded by the end of the year.

Freedom of expression

Social media activists

Activists continued to use social media platforms to raise governance issues. Although online expression was largely unrestricted, the police arrested Edwin Mutemi wa Kiama, a human rights defender, on 6 April for criticizing on Twitter government borrowing.¹ He was released on bail of KES 500,000 (about US\$4,488) on 7 April, ordered to report daily to the Directorate of Criminal Investigation (DCI) pending investigation, and not to comment on social media about Kenya's debt sustainability. On 20 April, he was released unconditionally due to insufficient evidence that he had violated Section 22 of the Computer Misuse and Cyber Crimes Act of 2018.

Environmental activists

In July, 67-year-old Joannah Stutchbury, a well-known environmental activist, was shot dead at her home in Kiambu County on the outskirts of the capital, Nairobi.² She had received death threats apparently linked to campaigns against construction of buildings in the Kiambu Forest. Although the president ordered the DCI to expedite investigations into her death, no suspects were arrested or prosecuted.

Discrimination

Gender-based violence

In May, the Ministry of Public Service, Gender and Youth Affairs reported a five-fold

increase in gender-based violence, mainly against women and girls, since the beginning of the Covid-19 outbreak, identifying, in particular, physical assault, rape and attempted rape, murder, “defilement”, physical harm, and psychological violence. The upsurge occurred in the context of prolonged lockdown periods, growing inequality and lack of mental health support.

Right to housing and forced evictions

Courts, including the Supreme Court, affirmed the right to housing and condemned forced evictions in several pre-pandemic cases.³ In January, the Supreme Court ruled that, in the absence of accessible and adequate housing, the government must

protect the rights and dignity of those in informal settlements. In July, it finally ruled on the 2013 eviction of residents from City Carton, an informal settlement in Nairobi, by the Moi Educational Centre and the Inspector General of Police. It held that their forced eviction violated fundamental rights to inherent human dignity, security of the person, and to accessible and adequate housing guaranteed under the Constitution.

Government agencies breached a presidential moratorium on evictions during the pandemic. Furthermore, the evictions were carried out without regard to due process requirements, including adequate notice. In February, 3,500 residents of Kibos, Kisumu County, were violently evicted by Kenya Railways Corporation officers, without adequate notice. Armed police used tear gas to force residents from their homes. A two-year-old boy who had been trapped under debris died during the evictions. In August, the High Court ruled that the Kenya Railways Corporation had violated the community’s rights and failed to follow fair administrative procedures. The decision barred future forced evictions against the community where alternative resettlement options are not provided. The residents belonged to the minority Nubian community who were resettled in Kibos in 1938. Since then, the state made no attempt to guarantee their security of tenure there, and for decades they have struggled to obtain recognition of their tenure.⁴

In October, police supervised evictions in Deep Sea and Mukuru kwa Njenga, informal settlements in Nairobi, to pave the way for the construction of roads, leaving hundreds of residents homeless. While authorities claimed to have given sufficient notice, the government did not appear to provide adequate alternative settlements or compensation for the residents and did not meet its obligation to ensure access to housing as directed by the courts.

Refugees’ and migrants’ rights

In March, citing increased insecurity and sustenance costs, the government issued a 14-day ultimatum to UNHCR, the UN refugee agency, saying that if it did not close

the Kakuma and Dadaab refugee camps, steps would be taken to return refugees to their countries of origin.⁵ The camps hosted around 512,000 refugees, around half of them from Somalia. Refugees, including LGBTI people, expressed their fear of returning to countries from which they had fled to seek safety in Kenya. On 30 April, the Kenyan government, following a meeting with UNHCR, postponed the closure of the Dadaab refugee camp to June 2022, retracting its initial position of immediate closure.⁶

There were around 1,000 LGBTI refugees in the Kakuma and Dadaab camps who were inadequately protected from homophobic attacks. In late March, unidentified people attacked the LGBTI refugee shelter in Kakuma camp, throwing a petrol bomb at the LGBTI refugees' houses. Two LGBTI refugees suffered second degree burns on about 50% of their bodies and were evacuated for specialized medical attention in Nairobi. One of them, 22-year-old Chriton Atuhwera died on 12 April. Chriton Atuhwera, also known as Trinidad, had fled to Kenya from Uganda where he had been persecuted because of his sexuality.⁷

Right to health

Although the cost of vaccinating the adult population against Covid-19 was equivalent to 1% of the country's annual budget (KES 38,329,600,000, around US\$350 million) only 15% were fully vaccinated. While commercial vaccine supplies remained a challenge to Kenya, the government made no commitment to allocate sufficient resources for vaccinations in the 2021-2022 annual budget.

Unlawful killings and enforced disappearances

During the year, 167 people were killed and 33 were forcibly disappeared by the police. Only 28 prosecutions were initiated against suspected perpetrators of unlawful killings and enforced disappearance. In April, a youth known as Collins from Mathare, an informal settlement in Nairobi, was arrested and killed by a police officer already suspected of multiple killings. His body was taken to the Nairobi City mortuary. The authorities did not investigate the crime.

In June, 28-year-old Erick Achando, a motorcycle taxi driver, was arrested in Kisii County for violating the curfew. He died a few days later in a police cell after failing to pay a fine of KES 8,000 (around US\$71). The police claimed that he had died of an illness. Two police officers were arrested and charged with his murder following an investigation by the Internal Affairs Unit of the National Police Service and an autopsy report that confirmed he died of severe head injuries after being hit by a blunt object.

Following an inquest,⁸ Police Constable David Kibet Rono was arrested and charged in July with the murder in 2015 of 20-year-old Nura Malicha Molu who died after being shot in Nairobi's Huruma estate. His alleged killer claimed to have acted in self-defence but the inquest found that he had not posed any danger to the officer. The decision came five years after the IPOA began investigating the killing and found inconsistencies, including in the various testimonies from police officers. For example, material evidence, including a weapon said to belong to Nura Malicha Molu, was not presented by officers for analysis.

In August, the bodies of brothers Benson Njiru Ndwiga and Emmanuel Mutura, aged 22 and 19 respectively, were found in Embu Level 5 Hospital mortuary, two days

after they were arrested by officers from Manyatta police station for allegedly breaking the curfew. Six police officers suspected of involvement in the murders were arrested and charged on the IPOA's recommendation. They were released on bail of KES 3,000,000 (about US\$26,291) on 4 November and barred from entering Embu County to guard against any potential interference with evidence and witnesses.

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1. "Kenya: Release and cease attacks on Edwin Mutemi wa Kiama", 5 October
 2. "Kenya: Statement on Joannah Stutchbury's murder", 16 July
 3. "Kenya: Kibos land and demolition case: High court finds Kenya Railways Corporation and the Ministry of Interior and Coordination of National Government guilty of gross human rights violations", 1 September
 4. "Kenya: Press statement on the forceful mass eviction of the Nubian community of Kibos, Kisumu County", 8 February
 5. "Kenya: Amnesty International statement on the proposed closure of Dadaab and Kakuma refugee camps", 6 April
 6. "Kenya: Clarification on our statement on revised roadmap for the closure of Kakuma and Dadaab refugee camps", 30 April
 7. "Kenya: Amnesty International statement on the killing of Ugandan refugee Chriton 'Trinidad' Atuhwera" 13 April
 8. "Kenya: Fix loopholes that facilitate unlawful killings", 9 August