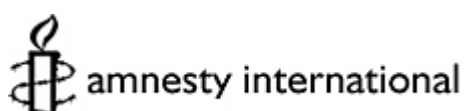


Title	Amnesty International Annual Report 2011 - Kenya
Publisher	Amnesty International
Country	Kenya
Publication Date	13 May 2011
Cite as	Amnesty International, <i>Amnesty International Annual Report 2011 - Kenya</i> , 13 May 2011, available at: http://www.unhcr.org/refworld/docid/4dce155d4f.html [accessed 15 August 2011]
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Amnesty International Annual Report 2011 - Kenya

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

Death penalty: **abolitionist in practice**

Population: **40.9 million**

Life expectancy: **55.6 years**

Under-5 mortality (m/f): **112/95 per 1,000**

Adult literacy: **86.5 per cent**

A new Constitution was passed providing a more comprehensive basis for the protection and fulfilment of human rights. The Constitution also offered a framework for addressing much needed political, judicial and other reforms. The government introduced a number of laws aimed at giving effect to the provisions of the new Constitution. However, impunity for past and current human rights violations continued to prevail, including for crimes committed during the post-elections violence of 2007/8 and for endemic violence against women.

Background

On 4 August, a significant majority (nearly two-thirds) of voters in a public referendum voted to adopt a new Constitution. The Constitution came into effect on 27 August.

Campaigns for the referendum and the conduct of the referendum itself were relatively peaceful but there were some reports of violence. These included three grenade attacks in June at a rally opposing the proposed Constitution at Uhuru Park in Nairobi, the capital. Six people were killed and over 100 injured in the explosions and ensuing stampede. The government announced investigations into the attacks but no progress was reported by the end of 2010.

In June, three Members of Parliament and one political activist were arrested and charged over remarks that implied that certain communities would have to leave their homes if the Constitution was ratified. Their trial was pending at the end of the year.

The official anti-corruption authority filed various cases in court against high-profile public officials. Proceedings continued at the end of the year. In line with the new Constitution, a cabinet minister accused of corruption in a pending court case was

suspended.

Impunity

No measures were implemented to ensure accountability for human rights violations, including possible crimes against humanity, committed in the post-election violence in 2007/8. A private members' bill seeking to establish a special tribunal to investigate and prosecute these crimes stalled in Parliament.

- There was no progress in the investigations into the killings of Oscar Kingara and Paul Oulu, two human rights activists killed in 2009.
- By the end of the year the killers of Francis Kainda Nyaruri, a freelance journalist murdered in 2009, had not been brought to justice.

Impunity – police and security forces

The government announced that it was finalizing three proposed laws on police reforms – the Independent Policing Oversight Authority Bill (establishing a police oversight authority), the National Police Service Bill (providing a new legal framework for policing) and the National Police Service Commission Bill (establishing a police service commission). The Bills had not been submitted to Parliament by the end of the year.

There were cases of unlawful killings and other human rights violations by the police and other security personnel. In March, eyewitnesses reported that seven men were shot dead by a group of administration police during a police operation in Kawangware, an informal settlement in Nairobi. Police officers claimed the men were part of a criminal gang, but witnesses said they were taxi drivers. The trial of seven police officers charged with the men's killings was pending in court by the end of the year.

No individual police officers or security personnel were brought to justice for unlawful killings and other human rights violations committed during the year and in the recent past.

International justice

In March, the International Criminal Court (ICC) decided to investigate crimes against humanity allegedly committed during the post-election violence of 2007/8. In December the ICC Prosecutor requested the Court to issue summonses against six individuals for crimes against humanity alleged to have been committed during the post-election violence. Parliament passed a motion in December calling for the executive arm of government to initiate Kenya's withdrawal from the Rome Statute establishing the ICC and for the repeal of the International Crimes Act which incorporates the statute into Kenyan law. The government's formal reaction to the motion was pending at the end of the year.

Although Kenya is obliged to arrest and surrender to the ICC anyone named in an arrest warrant, in August during celebrations to mark the new Constitution the government hosted Sudanese President Omar Al Bashir, against whom the ICC issued arrest warrants in March 2009 and July 2010.

Truth, Justice and Reconciliation Commission

The Truth, Justice and Reconciliation Commission (TJRC) established in the wake of the post-election violence started its operations. By the end of the year the TJRC was engaged in a country-wide process of taking statements from possible witnesses. However, its work was constrained by questions over the credibility of the chairperson and lack of funding. In April, the Commission vice-chair resigned, citing allegations that the chairperson had been involved in human rights violations and other issues that might be the subject of the TJRC's inquiry. Following a petition in April by eight of the nine

TJRC Commissioners, in October the Chief Justice appointed a tribunal to investigate the issue. In November the TJRC chair stepped aside pending the tribunal's report, which was due within six months.

Witness protection

In June the Witness Protection (Amendment) Act became law, expanding the definition of a witness in need of protection and establishing an independent witness protection agency.

Up to 22 witnesses who testified before a 2008 official inquiry into the post-election violence, who might be called to testify in future ICC or other trials, were reported to be living in fear. An unknown number fled the country because of threats.

Violence against women and girls

Sexual and other forms of gender-based violence remained rampant throughout the country. The official Demographic and Health Survey 2008-2009 found that spousal violence was widespread, in particular marital rape which is not criminalized under Kenyan law. The Survey also found that female genital mutilation was still practised by a number of communities. The social stigma attached to victims of sexual violence means that most incidents of sexual and gender-based violence are never reported.

In July Parliament passed the Counter Trafficking in Persons Act, penalizing human trafficking, including trafficking of children. The President assented to the law in October.

Housing rights

The government failed to enforce existing laws and standards on sanitation in slums and informal settlements, leaving millions of people without access to toilets and private washing facilities. The lack of access to facilities in the immediate household vicinity, combined with an absence of effective police presence in the slums and settlements, placed women at risk of sexual violence, particularly at night.

Forced evictions

More than 50,000 people living alongside railway lines remained under the threat of forced evictions after the state-owned Kenya Railways Corporation issued a 30-day notice to quit in March. The Corporation announced that the evictions related to an upgrading project. Although the evictions were not carried out by the end of the year, the Corporation had not formally withdrawn the threat of evictions. Most of the people likely to be affected had been living and working on these lands for years and a 30-day notice period was wholly inadequate. No comprehensive resettlement or compensation plan was announced and the government did not make provision for those who would lose their homes, livelihoods, possessions and social networks as a result of the project.

In July, bulldozers from Nairobi City Council demolished around 100 homes and 470 market stalls in Kabete, Nairobi. No official notice was given to those affected. Angry residents clashed with armed police in the following days as tensions flared in the settlement. A 74-year-old man who tried to complain about the police beating a woman was shot dead by police at close range. By the end of the year the police officer responsible for the shooting had not been brought to justice. The evictions left hundreds of people, mainly women and children, without shelter. Many slept outdoors without blankets or warm clothes and had no money to buy food or other essentials.

The government repeatedly announced plans to continue evicting thousands of people from the Mau Forest Complex. Hundreds of households evicted from the Complex in 2009 remained in makeshift displacement camps without proper access to emergency shelter and other services.

By the end of the year the government had not fulfilled its 2006 pledge to release national guidelines on evictions.

Internally displaced people

Thousands of people remained displaced as a result of the post-election violence of 2007/8. By September the government had provided resettlement land only for a few hundred households. Following evictions from the Mau Forest Complex, some 30,000 people remained displaced in a dozen makeshift camps.

Refugees and asylum-seekers

The continued closure of the Kenya/Somali border hindered the ability of the government, UNHCR (the UN refugee agency) and other organizations to address the needs of Somali asylum-seekers and refugees (see Somalia entry). The Kenyan authorities continued to prevent some Somali asylum-seekers from entering the country and to forcibly return some who crossed the border.

Overcrowding in the three Dadaab refugee camps, which host thousands of Somali refugees, continued to impede the refugees' access to shelter, water, sanitation and other essential services. The government agreed that one of the camps in Dadaab could be extended and a fourth camp established.

The Kenyan authorities continued to deny reports that they were involved in the forcible recruitment of refugees as soldiers in support of the Transitional Federal Government of Somalia in 2009. Some of those recruited from the camps in Dadaab were less than 18 years old.

Unlawful transfers of suspects

Between July and September up to 12 people suspected of involvement in bomb attacks in Kampala were arrested and transferred from Kenya to Uganda outside established legal procedures. These include extradition procedures which require reciprocal arrest warrants in both countries and judicial hearings. Kenyan authorities also ignored habeas corpus applications for some of the suspects who were unlawfully transferred to Uganda and charged with terrorism and murder (see Uganda entry).

Death penalty

Courts continued to impose the death penalty, although no executions were reported. The death penalty was retained in the new Constitution.

In July, the Court of Appeal, Kenya's highest court, declared that the mandatory application of the death penalty for the crime of murder is unconstitutional as it is "antithetical to the Constitutional provisions on the protection against inhuman or degrading punishment or treatment and fair trial". The Court expressly stated that the reasoning behind its rejection of the mandatory death penalty for the crime of murder might also apply to other capital crimes such as treason, robbery with violence and attempted robbery with violence. However, the Court ruled that the death penalty itself is constitutional.

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