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The year 2011 was supposed to be the one in which many Kenyans would realize the fruits of the new Constitution promulgated in August 2010. Kenya's new Constitution has been hailed as a progressive document that holds the potential to advance the rights of minorities and indigenous peoples and a host of key legal and institutional reforms. The reform process was held up by delays in appointing officials to fill key judicial posts, due to political jostling. The eventual appointment of Dr Willy Mutunga, a staunch human rights defender, as the new Chief Justice of the Republic of Kenya was celebrated by civil society.

Although the Constitution includes numerous positive provisions for minorities and indigenous communities, these groups feel that constitutional gains may not translate into real positive developments. The increased ethnicization of politics has deepened their exclusion. While the new Constitution could address the problem of political participation, the lack of political will to address issues relating to minorities is disturbing. Several court rulings in favour of minority communities against the government remain unimplemented to date. For instance, in 2006, the Kenya Constitutional Court found that the state had violated the right of the Ilchamus people to political participation and must ensure adequate representation of minority interests. The Kenyan government has also failed to restore ownership to the Endorois people of their ancestral lands around the Lake Bogoria National Reserve, as recommended by the African Commission on Human and People's Rights (ACHPR) two years ago.

The Nubian minority faces ongoing social exclusion. Nubians are not recognized as citizens in Kenya and have not been granted full property rights, although they have occupied Kibera, an expansive slum area outside Nairobi, for well over a hundred years. This situation has led to violent conflict with majority groups and mass displacement, most recently in November 2001. Having failed to secure citizenship through the Kenyan courts, Nubians took their case to the ACHPR in 2006. The case was declared admissible in 2009, but no decision has so far been taken. But in March 2011, the African Committee of Experts on the Rights and Welfare of the Child found Kenya in violation of the rights of Nubian children to non-discrimination.

The government has ambitions to turn Kenya into an industrialized middle-income country. In order to achieve this goal, it has designed a series of flagship projects (known as Vision 2030), that will transform parts of the country into modern cities at the expense of the livelihoods and cultures of minority and indigenous groups who live there. For instance, the government is set to develop Lamu, the largest town on Lamu Island and one of the oldest and best-preserved settlements among Swahili towns in East Africa, into a port, airport and a refinery. This will have potentially harmful impacts on the livelihoods and cultures of minority and indigenous communities in the area. Early in

2011, the governments of Kenya and Ethiopia signed an agreement to construct a railway line between Lamu Port and Addis Ababa. The proposed route will pass through northern Kenya, affecting communities such as Bajuni, Boni and pastoralists who reside in Isiolo area.

On a positive note, the National Cohesion and Integration Commission (NCIC) is currently formulating a policy on national cohesion that will have a significant impact on how minority and majority groups relate, focusing on the need for tolerance education.

NCIC has also emphasized the need for inclusion in public sector appointments. Its ethnic audit, released in April 2011, revealed that 70 per cent of all jobs in the civil service are occupied by members of the Kikuyu, Kalenjin, Luhya, Kamba and Luo communities.

The year 2011 saw the prosecution of six senior political figures – known as the 'Ocampo Six' – before the International Criminal Court (ICC) in April. Although they are accused by the ICC prosecutor, Luis Moreno-Ocampo, of bearing the greatest responsibility for crimes against humanity committed during the 2007/8 Kenya post-election violence, Kenyans are split along political and ethnic lines regarding the ICC case. Supporters of those on trial view it as political intrigue. In January 2012, the ICC confirmed charges against four senior Kenyans. The Head of Public Service Francis Muthaura and Finance Minister Uhuru Kenyatta were charged in relation to killings, forced transfers and rapes, allegedly committed in Nakuru and Naivasha in January 2008 especially against those perceived as supporters of the Orange Democratic Movement (ODM), in particular those belonging to the Luo, Luhya and Kalenjin ethnic groups. Suspended Higher Education Minister William Ruto and Head of Operations at Kass FM Joshua Arap Sang are charged separately for crimes they allegedly committed in the Rift Valley against supporters of President Mwai Kibaki's Party of National Unity (PNU) in 2007. The judges, however, refused to confirm charges against Police Commissioner Hussein Ali and former Industrialization Minister Henry Kosgei, due to lack of adequate evidence.

In March, two activists from the Ogiek hunter-gatherer community in Ngongogeri in Mau Forest, Rift Valley Province, including one woman, were attacked. The activists were protesting against attempts by land speculators to forcibly take over Ogiek land in Ngongogeri. The Mau Forest, home to an estimated 15,000 Ogiek, is often the scene of inter-ethnic clashes between the Ogiek, who are the indigenous owners of the land, and neighbouring majority communities. In 2009, Ogiek and other indigenous families were evicted by the government from the Mau Forest without due consultation under the guise of protecting the environment. Currently, more than 25,000 people, including Ogiek, Kipsigis and Maasai continue to live in camps around the forest. The Ogiek case is now pending before the African Court of Human and Peoples' Rights.

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