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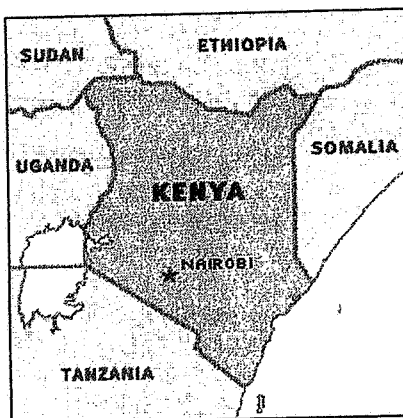
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HUMAN RIGHTS DEVELOPMENTS

After twenty-four years of autocratic rule by President Daniel arap Moi, Kenya looked forward to a general (presidential and parliamentary) election scheduled for December 2002. Kenyans also awaited a new constitution, after two years of procedural wrangles. Widespread corruption and lawlessness eroded the country's social and economic fabric, as living standards hovered at their lowest level in decades, but pressure also mounted to hold officials accountable for past crimes. There were continuing concerns over police brutality, judicial wrongdoing, and attacks on freedom of expression.



In October 2001, quelling rumors that he would run for another term, President Moi agreed to step down in January 2003. However, his public promotion of Uhuru Kenyatta, son of Kenya's founding president, Jomo Kenyatta, as his hand-picked successor outraged civil society groups and opposition politicians. Kenyatta, an inexperienced legislator appointed by the president in October 2001, was viewed as beholden to Moi. This interference in the process of choosing a new leader divided the ruling Kenya African National Union (KANU), which nevertheless voted to grant Moi sweeping powers within the party upon retirement as president. Bolstering KANU's chances going into the election was its March merger with the largest opposition party, the National Development Party, but deepening divisions within the new KANU threatened to offset that advantage. In September, a coalition of opponents, the National Alliance Party of Kenya (NAK), sought to capitalize on the KANU divisions by uniting to field its own presidential candidate, Mwai Kibaki, a former vice-president who had unsuccessfully run for president twice before. The next month, NAK and a KANU faction known as the Rainbow Coalition joined forces in a "super alliance" called the National Rainbow Coalition that posed the first serious challenge to the ruling party in Kenya's history.

The Constitution of Kenya Review Commission, made up of government appointees and civil society representatives, originally planned to produce a draft constitution by September 2002. However, riven by internal

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bickering and dogged by government attempts to delay and disband it, ahead of the deadline the commission requested and won an extension until January 2003 to complete its work. It conducted civic education countrywide to gather views about a new constitution. KANU attempted to link the commission's extension with an extension of the life of Parliament by as many months, but, after a public outcry, President Moi told Parliament to end its term in February 2003, as required in law. The commission issued its draft constitution in September after all, despite Moi's efforts to block it through the courts. The document outlined radical recommendations to reduce the power of the executive by creating the posts of prime minister and two deputy prime ministers, adding a second parliamentary chamber, and providing for presidential impeachment. It also recommended a complete judicial overhaul and replacing appointed local authorities with locally elected officials. In October, just as delegates to a national constitutional conference were preparing to debate the draft, Moi dissolved Parliament, effectively halting the constitutional review because the conference by law had to include members of parliament (MPs). Three days later, Moi moved to disband the constitutional review team and had the conference venue sealed off by armed police. Bolstered by a mounting campaign by lawyers and civil society representatives against Moi's heavy-handed tactics, the review commission refused to disband, although it was forced to adjourn the national constitutional conference until a new Parliament was in place.

With a leadership turnover imminent, the issue of official accountability escalated into a debate over amnesty for economic crimes and government-sponsored violence. In defiance of a July court order, President Moi refused to release a three-year-old report by the presidential Commission on the Ethnic Clashes (known as the Akiwumi Commission) on politically motivated ethnic violence that occurred throughout the country between 1991 and 1998. In October, Moi released the report, which implicated several high government officials. At a function marking the 1997 attacks in Likoni, near Mombasa in Coast Province, which had sparked armed ethnic attacks in Mombasa in the run-up to the last general election, human rights activists urged presidential candidates to promise to investigate and prosecute these and other political killings. Human Rights Watch published a report on the 1997 Coast Province violence in May, documenting the role of the ruling party in the violence and emphasizing the dangerous nexus between arms availability and politically motivated ethnic violence in Kenya. Perpetrators of the Likoni attacks told Human Rights Watch they had been backed by ruling party officials.

The arms flow from neighboring war zones continued to undermine Kenya's security, increasing the death toll from inter-ethnic violence, especially in Tana River and North Rift regions. The spread of small arms, combined with the manipulation of ethnic tensions by politicians, presented particular risks in an election year. Kenya's two previous general elections had been marked by bloodshed.

In Nairobi, the capital, violence erupted in two slums, Kibera in late 2001 and Kariobangi in March 2002. At least twenty-five people died in Kariobangi at the hands of vigilante gangs allied to certain ethnic groups and politicians, and while the police—who had ignored warnings of impending violence—made thirty-one arrests, they had not followed through with prosecutions as of this writing. In Kibera police went on their own rampage, raping, beating, looting and destroying property, and thousands of residents fled. The government ignored charges of political incitement in Kibera and ordered no independent inquiry. Although the police commissioner banned eighteen vigilante groups and private armies tied to prominent politicians in March, little enforcement took place. In fact, in

August the armed Mungiki faction, the main vigilante group involved in the Kariobangi massacre, staged a massive demonstration in Nairobi in support of Uhuru Kenyatta, with no police interference.

Police violently broke up or canceled numerous opposition party rallies, denying freedom of assembly to thousands of Kenyans whose main source of information about candidates was such gatherings. For example, in August, an opposition MP, James Orengo, was jailed for a few days for trying to hold a meeting. With political opposition higher in cities than in the countryside, the ruling party used youth gangs and local civic authorities in the run-up to the election to conduct sweeps of certain urban populations perceived to traditionally vote against the government. Repeated sweeps in Mombasa by police and gangs acting with public encouragement by a local KANU MP displaced eight thousand street hawkers belonging to Kikuyu and other ethnic groups thought to be anti-KANU. Hundreds of families in the slums of Nairobi and four other cities were also evicted.

Women's rights groups focused on the December election as an opportunity to boost their low numbers in elected office and win passage in a new Parliament of legislation on domestic violence, property rights, and other issues affecting women.

Kenya hosted close to 250,000 refugees at the beginning of 2002, principally from Somalia, Sudan and Ethiopia. In two new waves, ten thousand Somali refugees fled fighting in southwest Somalia in the spring. Nearly half of the new arrivals returned to Somalia after at least four refugees were killed by gunfire from the Somali side of the border, and amid reports of intimidation by the Kenyan police. Kenya's two major refugee camp complexes, Kakuma and Dadaab, were plagued with insecurity, incidents of rape and other violent crimes, and a serious reduction in food distribution because of inadequate supplies and donations.

Refugees living in Nairobi also suffered from rights abuses, many of which were linked to the Kenyan government's insistence that they reside in camps and not in urban areas. While no accurate numbers existed, the United Nations High Commissioner for Refugees (UNHCR) estimated that as many as sixty thousand refugees were living in Nairobi in 2002. Two young refugee children from Rwanda were murdered, and their mother seriously injured, during a nighttime knife attack in a UNHCR-run residence on April 17. In another incident in May, police conducted raids against "foreigners," arresting approximately eight hundred individuals who were held for several days in dismal conditions in an outdoor pen next to the Kasarani police station. At least 145 of the detainees were documented refugees who were charged with failing to register with the government—a statutory provision that was enforced for the first time, and with which no refugee could comply since government registration stopped in 1991. Similar group arrests took place in October 2001 and February 2002. Foreigners, including refugees, were often blamed for crime and insecurity and targeted for arbitrary arrest and detention.

Despite mounting public outrage over police brutality, incidents of killings and beatings in jail, rape, unlawful confinement, and excessive force continued. The government had yet to reflect the United Nations (U.N) Convention Against Torture in domestic law, despite having ratified it in 1997, and reports of torture persisted, especially of jailed opposition supporters in rural areas. In January, President Moi ordered authorities to build confidence in the jail system, commenting, in reference to torture and HIV/AIDS, "Currently, the public believes that once you are jailed, you will

be lucky to come out alive." Prison conditions nevertheless remained harsh, although accountability improved somewhat under new leadership, as symbolized by the arrest of four wardens accused of the September 2000 killing of six prisoners; the four were charged in July 2002 with murder.

The judicial system was described in July by Yash Pal Ghai, chairman of the constitutional review commission, as "incompetent and lethargic." Echoing an advisory panel of Commonwealth judicial experts, Professor Ghai said the judiciary had watched as the country's human rights record deteriorated, and that without urgent court reforms, a new constitution by itself could not fully guarantee Kenyans' rights. In a rare show of independence, a Kenyan court in May ordered the electoral commission to correct the imbalance whereby some constituencies had far fewer voters than others, yet had equal representation in Parliament.

Freedom of expression lost ground when courts awarded a series of record damages to establishment figures bringing libel suits against the media over unflattering stories. Although the press published freely, Parliament passed a law aimed at government control of newspapers: An amendment to the Books and Newspapers Act, the new law imposed exorbitant publishing fees that could handicap newspapers economically and silence new voices. Both these developments appeared designed to mute public criticism in an election year.

The government also continued harassing journalists. For example, in August, a magazine publisher and opposition MP, Njehu Gatabaki, was sentenced to six months' imprisonment for his magazine's coverage of politically instigated ethnic killings in Rift Valley before the 1997 general election. President Moi ordered his release a week later following public criticism. Some radio stations, especially those in rural areas, faced long delays before they could air programs, while the state-run Kenya Broadcasting Corporation enjoyed nationwide broadcast. In a potentially positive development, however, the government announced that both radio licenses and frequencies would now be issued from the Communication Commission of Kenya, rather than separately from the commission and the government--a move that could speed up the issuing of licenses.

As regards children's rights, the year began positively with a new children's law guaranteeing free primary school education and criminalizing forced marriages and female genital cutting. But reports of high rates of child labor and teenage girls' recruitment into the sex trade, as well as the caning death of a thirteen-year-old pupil, highlighted serious abuses perpetrated against children. Kenya had the third highest number of AIDS orphans in the world, according to a U.N. report.

Kenya is a party to the Mine Ban Treaty, and in December 2001 declared it had a total of 38,774 antipersonnel mines, some three thousand of which would be retained for training. In September 2001, Kenya was chosen as co-rapporteur of the Standing Committee on Mine Clearance. Kenya's military was involved in the U.N. demining operation along the Eritrea/Ethiopia border.

DEFENDING HUMAN RIGHTS

After years of inaction on human rights, Parliament passed a bill creating an autonomous Kenya National Commission on Human Rights, to replace

a standing committee appointed by President Moi several years ago. The president had not signed the bill as of this writing. The traditionally weak standing committee grew more aggressive in the last few years, even prodding the government to produce a long-overdue National Action Plan on the Protection and Promotion of Human Rights. A new national steering committee of standing committee members and civil society groups was to submit a draft plan to the government for endorsement and forwarding to the U.N.

Sporadic government harassment of human rights activists occurred, for instance in August, when police broke up a Mombasa meeting to elect officials for the Coast Civil Society Forum. Other human rights groups—pressing for an end to police brutality, curbs on freedom of assembly, government corruption and violations of the right to life and property—routinely faced similar harassment by police and local authorities when they attempted to hold civic education meetings.

THE ROLE OF THE INTERNATIONAL COMMUNITY

Kenya's importance as a strategic ally in the war against terrorism prompted Western governments to be muted on human rights, albeit their focus on government mismanagement and corruption remained strong. The United States in particular increased support for Kenya. International donors continued to withhold funding until anti-corruption conditions set by the International Monetary Fund (IMF) and World Bank in January 2000 were met. While Kenya made some progress on conditions, it still had to pass anti-corruption legislation, prosecute significant graft cases, and speed up privatization. The donors also insisted on a code of ethics for public servants, repeal of a law controlling interest rates, and strengthening of a new anti-corruption police unit. President Moi and government officials accused lenders of coercion and "shifting goalposts."

Kenya's endemic corruption reached inside the World Bank itself: in May its officer in charge of Kenya's roads program pleaded guilty to bribery. Earlier in the year, three Nairobi employees of UNHCR were charged with taking bribes from people seeking resettlement to third countries.

European Union

A gap deepened between E.U. donors and Kenya's ruling party, as donors stood firm with the IMF on aid conditions. The United Kingdom (U.K.), once a staunch supporter of Moi's regime, toughened its stance. In a January visit to Nairobi, the foreign affairs minister Baroness Valerie Amos said there would be no softening of U.K. policy on aid to Kenya as a result of Kenyan support for British and American anti-terrorism efforts. The U.K. also warned KANU against delaying the election. The British government withheld half its aid after Kenya failed to pass anti-corruption legislation, but continued to give support in other areas, such as the war on HIV/AIDS, reproductive health, and education. Citing mismanagement, Belgium ended aid to Kenya, while the Netherlands scaled back its assistance. Despite cooling relations, Kenya allowed the U.K., along with Germany, to fly reconnaissance missions along the coast in search of al-Qaeda elements in the region.

United States

Despite a stinging State Department report cataloguing widespread human rights abuses, and the Bush administration's concerns over poor governance, the U.S. maintained strong support for Kenya, its strategic ally in East Africa. The war on terrorism dominated relations. In December, U.S. anti-terror teams advised Kenyan officials on security and money-laundering issues, and Walter Kansteiner, assistant secretary of state for Africa, met with President Moi to discuss terrorism. Soon after, three thousand U.S. troops held joint military exercises with Kenyan soldiers on the coast. In March, General Tommy Franks, head of the U.S. military's Central Command, included Kenya in a tour of Horn nations as he sought support for anti-terrorism.

The U.S. provided support for constitutional review and anti-graft police training by the Federal Bureau of Investigation. Overall, assistance to Kenya in fiscal year 2002 was \$53.1 million, primarily for fighting HIV/AIDS, but also for food and rural development. A supplemental request to Congress for \$7 million in economic support and \$15 million for military aid (up from \$1 million the previous year) targeted border security in the northern and eastern regions, reflecting U.S.-Kenyan cooperation in the war on terrorism. Trade between the two countries rose. In the first visit ever to sub-Saharan Africa by a U.S. trade representative, Robert Zoellick met with President Moi and his cabinet to discuss economic growth, investment, trade and terrorism.

RELEVANT HUMAN RIGHTS WATCH REPORTS:

Hidden in Plain View: Refugees Living Without Protection in Nairobi and Kampala, 11/02

Playing With Fire: Weapons Proliferation, Political Violence, and Human Rights in Kenya, 5/02

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