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[Previous](#) - [Home](#)

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KENYA

REPUBLIC OF KENYA

Head of state and government: Mwai Kibaki

Death penalty: abolitionist in practice

International Criminal Court: ratified

UN Women's Convention: ratified

Optional Protocol to UN Women's Convention: not signed

Overview - Covering events from January - December 2005

[Background](#) : [Attacks on freedom of the media](#) : [Violence against women](#) : [Human rights defenders and demonstrators](#) : [Torture and unlawful killings](#) : [Protection of refugees and asylum-seekers](#) : [Death penalty](#) : [Impact of 'anti-terrorism' operations on human rights](#) : [AI country visits](#)

There was increased intimidation and harassment of the media and journalists by the authorities. Violence against women, including rape and domestic violence, remained a serious concern. The work of human rights defenders was obstructed.

Background

The protracted constitution-making process ended after a referendum on 21 November in which 57 per cent of voters rejected the draft constitution. Campaigning was marred by violence, with at least eight people killed in Kisumu and Mombasa. Following the referendum, President Kibaki sacked the entire cabinet, announcing a new cabinet on 7 December.

The proliferation of illegal weapons remained a serious concern. In July, the authorities burned 3,786 small arms recovered by police. According to police estimates, over 20,000 crimes were committed in the country annually using small arms.

In early June, four men charged with murder following the bombing of a hotel in Kikambala near Mombasa in November 2002 were acquitted after the trial judge ruled there was no evidence to connect them to the murders. One of them was rearrested and charged with illegal possession of arms. His application for bail was rejected. On 27 June, Nairobi's Chief Magistrate acquitted another three men charged with conspiracy to commit murder in the November 2002 hotel attack, saying that the prosecution had failed to prove its case.

More than 300,000 people continued to be internally displaced in Kenya. Conflict along borders and over access to scarce resources such as water and grazing lands, as well as inter-communal hostility aggravated by political rivalry, were among the main causes of internal displacement.

In March, Kenya ratified the Rome Statute of the International Criminal Court (ICC). Kenya did not sign the Article 98 exemption that would give US citizens on Kenyan soil immunity from prosecution by the ICC.

Kenya presented its second periodic report for consideration by the UN Human Rights Committee in March, after an 18-year delay.

Attacks on freedom of the media

There was increased intimidation and harassment of the media and journalists as the authorities took aggressive measures to silence investigative or critical voices.

- Criminal libel charges were brought against Kamau Ngotho, an investigative journalist, arising from an article about corruption published in the *Standard* in January. Following a public outcry, the charges were dropped.
- In September, David Ochami of the *Kenya Times* was arrested and charged with "publishing alarming information" for writing an article critical of the President. His trial started in November.
- The wife of the President went to the premises of the Nation Media Group on 2 May, accompanied by bodyguards, allegedly to complain about criticisms of her. She reportedly assaulted a cameraman, Clifford Derrick Otieno, who was filming the scene. He complained to police, but no further action was taken, and the Attorney General terminated a private prosecution that he initiated.

Violence against women

Women and girls continued to face widespread violence and discrimination. However, data on the prevalence of acts of violence against women, including domestic violence and rape, was inadequate. According to figures quoted in parliament, police recorded 2,300 rapes in 2004. However, statistics from health facilities and non-governmental organizations suggested that the number of unreported rapes in Kenya could be as high as 16,000 a year.

In April, parliament agreed to discuss a proposed Sexual Offences Bill.

Human rights defenders and demonstrators

The work of human rights defenders was obstructed. They were subjected to harassment and ill-treatment. During protests and demonstrations, demonstrators and their leaders were arrested and charged.

- Scores of anti-globalization activists were arrested in early March in Mombasa. They were protesting against unfair trade practices while officials from 33 countries met to discuss trade negotiations ahead of the World Trade Organization (WTO) meeting in Hong Kong in December. The activists were charged with “conducting an unlawful procession”.
- Before the opening of parliament in March, police in Nairobi used tear gas and water cannons to disperse some 200 people demonstrating peacefully to demand a referendum on the draft constitution. Seven people were arrested and detained. Two of them, injured during the arrest, were reportedly denied access to medical care.
- At least one person was killed by the police in further demonstrations over the draft constitution in July. About 20 people were detained and charged with “creating disturbance and malicious damage”.
- On 10 August, 22 activists demonstrating against irregular allocation of public land to private investors in Kitale Town were arrested and detained. On 12 August, Father Gabriel Dolan, a well-known human rights defender who had taken part in the demonstration, was arrested when he visited those in custody. Father Dolan was charged with “incitement to violence, malicious damage of property by a rioting assembly group and taking part in unlawful assembly”.

Torture and unlawful killings

There were continuing reports of torture and unlawful killings by state agents.

A survey commissioned by the Kenya Human Rights Commission to establish the level of public awareness of human rights disclosed that people were reluctant to report torture.

In March, human rights groups condemned a statement by the Minister for Internal Security calling for police to shoot to kill anyone found with illegal firearms. Human rights defenders argued that while they deplored the level of insecurity in the country, shooting in such conditions would amount to unlawful killing.

There were several reports of unlawful killings perpetrated by law enforcement officials. Few such cases were investigated or prosecuted, encouraging impunity for such acts. No statistics were available on the number of people killed by police.

Protection of refugees and asylum-seekers

Approximately 240,000 refugees and asylum-seekers lived in Kenya. Refugees lived in designated refugee camps – Dadaab had about 138,000 refugees, predominantly from Somalia, and Kakuma had about 87,100 refugees, the majority from Sudan. There were also substantial numbers from Ethiopia, Eritrea and neighbouring countries in the Great Lakes region. An estimated 15,000 to 60,000 refugees were living without the necessary documents in Nairobi and other towns.

In April, the Minister for Immigration, Registration of Persons and Refugees stated that non-citizens who did not possess necessary registration documents would be deported to their countries of origin. The deadline for registration was fixed for 30 June, later extended to 15 August 2005. Large numbers of people turned up at the Office of the UN High Commissioner for Refugees in Nairobi in June in order to register an asylum claim. Many would be at risk of serious human rights violations in their countries of origin if they were arrested and deported. The process of refugee status determination was still under way at the end of the year.

In March, the authorities released former Iraqi air force pilot, Adel Mohammed Al-Dahas, after four years in detention in a police cell in Nairobi despite the fact that he was granted refugee status in 2001. By the end of 2005, his request for resettlement to a third country had not yet been granted.

Death penalty

In March, the Minister of Justice and Constitutional Affairs declared at the UN Commission on Human Rights that his government was committed to abolishing the death penalty and that in the meantime all death sentences would be commuted to life imprisonment. At the end of the year, however, this process had not been completed.

In April, the High Court in Kakamega freed four Ugandans who had been on death row since 1995 after a successful appeal against their death sentences. The four were members of the February Eighteen Movement, which allegedly aimed to overthrow the former government in Kenya.

Impact of ‘anti-terrorism’ operations on human rights

Human rights violations were committed during “anti-terrorism” operations conducted since the 2002 bombing of a hotel near Mombasa that killed 15 people. The violations included: the use of torture and other ill-treatment during detention including physical abuse; detention of suspects without charge in undisclosed locations and without access to a lawyer or relatives; the holding of suspects in degrading and unsanitary conditions without access to medical care; harassment of family members and arbitrary detention of relatives to put pressure on suspects to hand themselves in; and the failure of police to show warrants when arresting individuals or conducting searches of

property.

AI country visits

AI delegates visited Kenya in March to meet government officials and launch the report *Kenya: The impact of "anti-terrorism" operations on human rights*.

Kenya

Archive information

Kenya: The impact of "anti-terrorism" operations on human rights
(AI Index: AFR 32/002/2005)

Kenya: Abolition of the death penalty is essential for a Constitution that respects human rights
(AI Index: AFR 32/005/2005)

Kenya: The Government must respect the rights of refugees under international law
(AI Index: AFR 32/007/2005)

[Previous](#) - [Home](#)

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