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Republic of Kenya

Head of state and government: **Uhuru Muigai Kenyatta**

Security forces carried out enforced disappearances, extrajudicial executions and torture with impunity, killing at least 122 people by October. Some abuses were committed by security agencies in the context of counter-terror operations, others by unaccountable police officers and other security agencies. Police used excessive and lethal force to disperse demonstrators calling for fair election practices. Political opposition, anti-corruption groups and other civil society activists, as well as journalists and bloggers, were harassed. Families in informal settlements and marginalized communities were forcibly evicted from their homes.

BACKGROUND

Corruption remained rife. President Kenyatta asked almost a quarter of his cabinet secretaries to resign after the state's Ethics and Anti-Corruption Commission (EACC) accused them of corruption. Some faced trial for corruption, others appeared before oversight institutions to answer allegations of corruption. According to the EACC, at least 30% of GDP – equivalent to about US\$6 billion – is being lost annually to corruption.

Local governments were also accused of corruption, largely by inflating costs in procurement processes. The Ministries of Health and of Devolution and Planning were under investigation for alleged misappropriation of funds, among other things.

In May, civil society organizations launched Kura Yangu, Sauti Yangu, a movement to ensure legitimate, fair and well-organized elections due in August 2017. Soon after, the opposition Coalition for Reform and Democracy (CORD) organized weekly demonstrations over what it considered the bias of the Independent Electoral and Boundaries Commission (IEBC). On 3 August, IEBC commissioners resigned, ending months of protests over the election process. On 14 September, the Election Laws (Amendment) Bill came into force, inaugurating the process of recruiting new IEBC commissioners. However, the recruitment of new commissioners was delayed after the recruiting panel postponed indefinitely the recruitment of the Chairperson after five interviewed candidates failed to meet the requirements. The delay will negatively impact the electoral preparations timeline.

ABUSES BY ARMED GROUPS

Al-Shabaab, the Somali-based armed group, continued to carry out attacks in Kenya.

On 25 October, for example, in the northeastern town of Mandera, at least 12 people were killed in an attack by al-Shabaab on a guesthouse hosting members of a theatre group.

COUNTER-TERROR AND SECURITY

In the context of counter-terrorism operations targeting al-Shabaab, security agencies were implicated in human rights violations, including extrajudicial executions, enforced disappearances and torture. Despite an increase in reported cases of these violations, meaningful investigations were not carried out with a view to ensuring accountability.

EXTRAJUDICIAL EXECUTIONS

Police and other security agencies carried out extrajudicial executions as well as enforced disappearances, and torture.^[1]

Willie Kimani, a lawyer with a legal aid charity, his client Josphat Mwendwa and their taxi driver Joseph Muiruri, were abducted on 23 June at an unknown location. On 1 July, their bodies were found dumped in a river in Machakos County, eastern Kenya; post mortems showed they had been tortured. Josphat Mwendwa, a motorcycle taxi driver, had accused a member of the Administration Police (AP) of attempted murder after the officer shot him in the arm during a routine traffic check. The officer then charged him with a traffic offence to intimidate him into dropping the complaint. The abduction happened after Willie Kimani and Josphat Mwendwa left Mavoko law courts in Machakos County after attending a hearing in the traffic offence case. On 21 September, four AP officers – Fredrick ole Leliman, Stephen Cheburet Morogo, Sylvia Wanjiku Wanjohi and Leonard Maina Mwangi – were found guilty of murdering the three men. The officers were remanded in custody awaiting sentencing at the end of the year.

The killings of the three men triggered protests and mobilized human rights organizations, the media and legal and other professional organizations across the country to demand action against enforced disappearance and extrajudicial executions.

Job Omariba, a nurse in the eastern town of Meru was reported to have gone missing in Nairobi on 21 August. His body was discovered at Machakos mortuary on 30 August. Later that day, the Special Crime Prevention Unit arrested three police officers on suspicion of his abduction and murder.

On 29 August, two policemen walked into Mwingi Level 4 Hospital and shot dead Ngandi Malia Musyemi, a hawker, after he reported to police that he had been carjacked. His sister witnessed the killing. Officers from Nairobi, Machakos and Embu were assigned to investigate the killing.

Kenya does not have an official database of police killings or enforced disappearances. According to Haki Africa, a human rights group, there were 78 extrajudicial executions and enforced disappearances in Mombasa County in the first eight months of 2016. The *Daily Nation* newspaper documented 21 cases of police killings during the same period.

FREEDOM OF ASSEMBLY

The police used excessive and lethal force to disperse protesters in Nairobi and other towns during demonstrations against the IEBC.

On 16 May, a male protester in Nairobi was shot and injured in a confrontation with police as residents from the informal settlement of Kibera tried to march to the electoral commission's offices.

On 23 May, police used batons, tear gas, water cannons and, in some cases, live ammunition to disperse protesters marching towards the electoral commission's office. A video showed three policemen kicking and beating a protester after he fell down.^[2] The same day, at least two people were killed and 53 injured during a demonstration in the western city of Kisumu.

FREEDOM OF EXPRESSION

The authorities continued to curtail freedom of expression by intimidating and harassing journalists, bloggers and other members of civil society, particularly by using the ambiguity of the Kenya Information and Communication Act. At least 13 people were prosecuted under Section 29 of the law, which includes vague

terms such as "grossly offensive" and "indecent". On 19 April, the High Court found that Section 29 was in breach of the Constitution's provisions on the right to freedom of expression.

Mbuvi Kasina, a journalist, continued to face six counts of misuse of a licensed telecommunication system for questioning the expenditure of Kitui South Constituency Development Funds.

On 27 September, police harassed, attacked and destroyed the camera of Duncan Wanga, a K24 TV journalist and cameraman, while he was covering a demonstration in the western city of Eldoret.

On 1 October, the Deputy President threatened to sue activist Boniface Mwangi after he posted a tweet linking the Deputy President to the murder in May of businessman Jacob Juma. The Deputy President's lawyers demanded that the activist offer an apology, retraction and clarification within seven days. Boniface Mwangi's lawyers welcomed the suit, citing ICC cases and allegations made by a Member of Parliament about Jacob Juma's killing to show that the Deputy President's reputation had not been injured by the tweet.

REFUGEES AND ASYLUM-SEEKERS

In May, shortly after it revoked the assumed refugee status of Somalis who had fled to Kenya, the government announced it would close Dadaab refugee camp on 30 November. To justify the move, it cited national security concerns and the need for the international community to share the responsibility of hosting the refugees. Dadaab is home to over 280,000 refugees, of whom 260,000 are from Somalia. The short timeframe, government statements about the repatriation process and the lack of security in Somalia raised concerns that the repatriation of Somalis would be forced, in violation of international law, and put at risk the lives of tens of thousands of people.^[3] According to UNHCR, the UN refugee agency, by mid-October, 27,000 Somali refugees had returned to Somalia from Dadaab in 2016, nominally voluntarily. On 16 November, the authorities stated they would extend the deadline for the closure of Dadaab by six months.

In May, the government disbanded the Department of Refugee Affairs (DPA), created in accordance with the 2006 Refugee Act, and established instead the Refugee Affairs Secretariat. The Secretariat is not established by law and functions at the behest of the Ministry of Interior and National Government Co-ordination.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

On 16 June, the High Court in Mombasa upheld the legality of anal examinations of men suspected of engaging in same-sex sexual activity. Two men had petitioned the Court to declare unconstitutional anal examinations as well as HIV and Hepatitis B tests they had been forced to undergo in February 2015. The Court ruled that there had been no violation of rights or breach of the law. Forced anal examinations and forced HIV testing violate the right to privacy and the prohibition of torture and other ill-treatment under international law. The High Court's ruling breached several human rights treaties ratified by Kenya.

HOUSING RIGHTS – FORCED EVICTIONS

Families living in informal settlements and marginalized communities continued to be forcibly evicted in the context of large infrastructure development projects.

In Deep Sea informal settlement in Nairobi, 349 families were forcibly evicted on 8 July to allow construction of the road linking Thika Super Highway to Westlands Ring Road. The eviction took place without notice and while consultation was taking place between the community and the Kenya Urban Roads Authority (KURA). Residents were attacked during the evictions by armed youth ferried in by government construction and private vehicles. Armed police officers were present and threatened to shoot residents if they resisted eviction. KURA and the EU, which is funding the road, had assured Deep Sea residents they would not be forcibly evicted.

KURA took responsibility for the violations of the rights of residents during a meeting with Deep Sea community leaders. In a letter to the community, it agreed to urgently put in place corrective measures, including to restore the sanitation facilities, facilitate reconstruction of people's houses, and provide humanitarian assistance such as cooking facilities and blankets for those who had lost everything. KURA and Deep Sea residents agreed that permanent residents would each receive 20,000 Kenya shillings (around US\$200) and that this would not be recognized as covering losses incurred in the forced eviction.

Representatives of the Sengwer Indigenous People reported that Kenya Forest Service repeatedly burned houses in Embobut forest. Local courts heard cases concerning Sengwer people who had been arrested for being in the forest, despite a pending court case brought by Sengwer to challenge their eviction and a 2013 injunction issued by the High Court of Eldoret to stop arrests and evictions while the legal challenge was being considered.

1. Kenya: Set up judicial inquiry into hundreds of enforced disappearances and killings ([News story](#), 30 August)
2. Kenya: Investigate police crackdown against protesters ([News story](#), 17 May)
3. Kenya: Government officials coercing refugees back to war-torn Somalia ([News story](#), 15 November)

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