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Amnesty International Report 2010 - Kenya

REPUBLIC OF KENYA

Head of state and government: Mwai Kibaki

Death penalty: abolitionist in practice

Population: 39.8 million

Life expectancy: 53.6 years

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

Adult literacy: 73.6 per cent

The authorities showed little political will to ensure that those responsible for human rights abuses committed during the post-election violence of 2007/8 were brought to justice and that victims received adequate reparations. Impunity for state security officials who carried out unlawful killings and torture was not addressed. Human rights defenders faced considerable risks and threats. Violence against women and girls remained widespread. Thousands of people were forcibly evicted from their homes. The President commuted to life imprisonment the sentences of more than 4,000 prisoners who had been on death row for prolonged periods. Courts continued to impose death sentences but there were no executions.

Background

The government introduced several measures recommended in agreements reached during the political mediation – the Kenya National Dialogue and Reconciliation – following the post-election violence of 2007/8. In February, a committee of experts was appointed to lead the process of redrafting and adopting a new Constitution. In November, the committee issued a draft Constitution for public comments. In April, the Interim Independent Electoral Review Commission was formed to oversee elections for two years until a permanent electoral body is established. In September, the government appointed members of the National Cohesion and Integration Commission mandated by a 2008 law to promote national integration. Overall, however, there was little progress in implementing fundamental reforms proposed under the agreements.

There were regular disagreements within government and between the two main political parties that formed the coalition government – the Party of National Unity and the Orange Democratic Movement. As a result, much-needed legal, constitutional, land, electoral and other reforms were delayed.

Dozens of people were killed in violence, particularly in central Kenya, involving armed community vigilante groups and members of the Mungiki vigilante group. The police failed to effectively enforce law and order.

Impunity – post-election human rights violations

No measures were implemented to ensure accountability for human rights violations, including possible crimes against humanity, committed during the post-election violence in 2007/8, when more than 1,000 people were killed.

In February Parliament rejected a Bill to establish a special tribunal to investigate and prosecute suspected perpetrators of these crimes. In July the cabinet rejected the tabling of a redrafted government version of the Bill. A private members' Bill seeking to establish a special tribunal was published in August and was pending in Parliament at the end of the year.

In July the government announced plans to use the truth, justice and reconciliation process and carry out "accelerated reforms of the judiciary, the police and the investigative arms of government" to deal with human rights abuses during the post-election violence, but no timeline was given.

In July, the Office of the Prosecutor of the International Criminal Court (ICC) reiterated to the government that primary responsibility for investigations and prosecutions into crimes that may fall within the jurisdiction of the ICC lies with Kenyan authorities. At the end of the year, an application by the ICC Prosecutor filed in November to the Pre-

Trial Chamber to authorize an investigation into possible crimes against humanity during the post-election violence was pending.

Police and security forces

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

In February, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions conducted a fact-finding mission to Kenya. His report issued in May confirmed systematic and widespread human rights violations by the police and other security personnel. It documented unlawful killings, torture and other human rights violations by the police during the post-election violence in 2007/8, in security operations against alleged members of the outlawed Mungiki vigilante group, and during a 2007 security operation in Mount Elgon in western Kenya.

In November, a government-formed task force recommended comprehensive police reform measures, including the establishment of an independent police oversight body mandated to investigate and act on complaints against the police. However, it was unclear by when and how the recommendations would be implemented.

Human rights defenders

In early March, Oscar Kingara and Paul Oulu were killed by unknown armed assailants in Nairobi. Both men worked for the Oscar Foundation, a legal aid and human rights advocacy organization, and had provided the visiting UN Rapporteur with information about alleged police killings. No progress with investigations into the two killings was reported.

Several human rights activists, including officials of NGOs working in Nairobi and local activists based in Mount Elgon area of western Kenya, fled the country after being threatened and harassed by police and other security personnel.

Internally displaced people

Most camps hosting the majority of thousands of families displaced during the post-election violence closed down. An estimated 200,000 internally displaced people (IDPs) returned to their homes. In September, the government ordered the resettlement of all IDPs who were in camps within two weeks and announced the provision of resettlement allowances. However, as of October thousands of IDPs remained displaced in transit camps and other areas. The UN estimated that 7,249 households were being hosted in 43

transit camps in the Rift Valley province. Many IDPs complained that they did not receive government assistance in their attempt to return home or resettle. Others said that government assistance was often inadequate. Hundreds of IDP families complained that they were being forced to leave camps to return home despite fears about their security.

Violence against women and girls

Women and girls continued to face widespread gender-based violence and limited access to justice. In March, a study by the International Federation of Women Lawyers in Kenya documented that women and girls with disabilities were three times more likely to be subjected to gender-based violence than those without disabilities, and that the violence was unlikely to be reported.

Truth, Justice and Reconciliation Commission

In July, the government appointed commissioners to the Truth, Justice and Reconciliation Commission (TJRC), established following the post-election violence, and the President approved amendments to the 2008 TJRC Act through the Statute Law (Miscellaneous Amendment) Act, 2009. The 2009 law amended section 34 of the TJRC Act to stipulate that no amnesty may be recommended by the TJRC in respect of genocide, crimes against humanity and gross human rights violations. However, concerns remained about the failure of the TJRC law to provide for effective protection for victims and witnesses and for adequate reparations for victims.

Refugees and asylum-seekers

Increasingly, the authorities forcibly returned asylum-seekers to Somalia. The government did not formally reverse its January 2007 decision to close the Kenya/Somalia border, although more than 50,000 Somali refugees and asylum-seekers managed to cross into Kenya during 2009.

The humanitarian conditions in the Dadaab refugee camp hosting most Somali refugees continued to deteriorate; the camp's population was three times more than its intended capacity.

Freedom of expression

Despite concerns that the Kenya Information and Communications (Amendment) Bill would lead to unjustified restrictions on freedom of expression, the Bill became law in January. In July another new media-related law repealed provisions in the January law

that granted the government power to control media broadcast content. It also provided for an independent statutory body with the power to regulate the media.

Several journalists were intimidated and threatened by state officials over stories critical of government practice.

- In January, Francis Kainda Nyaruri, a freelance journalist based in south-western Kenya, was killed by unidentified assailants. The local press reported that his killing was thought to be linked to articles he had written about alleged corruption and other malpractices by the local police. Two suspects were reportedly arrested but no prosecution followed. Witnesses to the killing were threatened, reportedly by police.

Right to adequate housing

In September, Parliament adopted the report of the Task Force on the Mau Forest Complex, appointed by the government in 2008. The report recommends, among other things, the eviction of thousands of families who live in the forest complex. Subsequently, the government formed a unit to co-ordinate the rehabilitation of the forest, but had not issued a comprehensive plan on the recommended evictions that would avoid forced evictions as witnessed in the removal of thousands of people from parts of the forest between 2004 and 2006. The first phase of planned forest evictions in the Mau forest scheduled by the government for the coming years was carried out in November. It involved the eviction of 2,850 households comprising some 20,345 people, according to the authorities. Most evictees said they were denied adequate notice and had no alternative housing. Most ended up in temporary and makeshift displacement camps without proper access to emergency shelter and other services.

In July, almost 3,000 people were forcibly evicted from their homes in Githogoro Village, Nairobi. Police told residents that they had 72 hours to dismantle their homes before government bulldozers would move in. The evictions were ostensibly carried out as part of government plans to build a new road, the Northern Bypass.

At the end of the year, hundreds of families living in informal settlements close to the Nairobi River were still living under the immediate threat of forced eviction following a 2008 government announcement calling on residents to leave. There were no plans to ensure that any evictions would respect appropriate legal protections and other safeguards.

The government failed to fulfil its 2006 pledge to release national guidelines on evictions. It also failed to stop forced evictions until the guidelines were in place.

Some 2 million people – half of Nairobi's population – continued to live in slums and informal settlements, crammed into 5 per cent of the city's residential area. Residents suffered not only squalid conditions and lack of basic services, but also discrimination, insecurity and marginalization. Despite a national housing policy adopted in 2005 that promised the progressive realization of the right to housing, the government continued to fail to provide accessible, affordable housing. An ongoing slum upgrading process remained slow and under-resourced. Slum residents complained of being inadequately consulted about the programme's implementation.

Death penalty

In August, the President commuted to life imprisonment the death sentences of more than 4,000 prisoners. He stated that an "extended stay on death row causes undue mental anguish and suffering, psychological trauma, anxiety, while it may as well constitute inhuman treatment". He ordered a government study on whether the death penalty had any impact on the fight against crime. It was unclear whether this study was undertaken and no findings were published.

Courts continued to impose the death penalty; no executions were reported.

Amnesty International visits/reports

- Amnesty International delegates visited Kenya in February, March, June, September and November. In June, Amnesty International's Secretary General led an Amnesty International high-level mission to Kenya.
- Kenyan authorities cannot wait for the International Criminal Court to end impunity for crimes (AFR 32/001/2009)
- Kenya: The unseen majority – Nairobi's two million slum-dwellers (AFR 32/005/2009)
- How the other half lives: Nairobi's slum-dwellers (AFR 32/006/2009)
- Kenya: Statement on the conclusion of the mission led by Amnesty International's Secretary General (AFR 32/007/2009)
- Kenya: Amnesty International calls for immediate investigation into execution-style killings of human rights activists, 6 March 2009