



World Report 2013 - Kenya

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Kenya continues to face serious challenges with implementing its new constitution and police reforms, as well as ending impunity for serious crimes by public officials and security forces. Kenya will hold general elections in March 2013, the first polls under the 2010 constitution. Four Kenyans, including three senior public officials – two of whom are running for the presidency in 2013 – are facing charges of crimes against humanity at the International Criminal Court (ICC). This followed the post-election violence of 2007, which left 1,300 people dead. There are concerns of further election-related violence around the 2013 elections.

Kenya's October 2011 military incursion into Somalia sparked a string of retaliatory attacks across the north of the country and in Mombasa and Nairobi in 2012. Dozens of civilians and security personnel were killed and injured in shootings and grenade attacks, allegedly by supporters of the armed Somali Islamist group al-Shabaab. Security forces often responded by arbitrarily arresting, detaining and beating civilians in Wajir, Mandera, Garissa, and the Dadaab refugee camps.

Election Campaigns, Ethnic Profiling, and Violence

Early campaigns around the country were characterized by mobilization along ethnic lines, ethnic profiling and violence. Some politicians instructed members of their communities to support certain presidential candidates, or face dire consequences. Others launched national campaigns that appeared to demonize specific candidates and their communities in advance of the 2013 elections, heightening ethnic tensions and the risk of election related violence in Coast, Central Kenya, Rift Valley and Nyanza regions. In July 2009, a new law prohibiting hate speech was promulgated. Under this law, which has been largely ineffectual, the National Cohesion and Integration Commission (NCIC) has taken four politicians to court, with no convictions. This raises concerns about the independence and capacity of the police, the NCIC and the office of the director of public prosecutions (DPP) to deal with ethnic profiling and hate speech.

Politically instigated violence broke out in various parts of the country in 2012. In Isiolo and Moyale counties, at least 21 people were killed and at least 20,000 displaced in inter-clan violence that persisted for weeks without decisive government intervention. The government eventually arrested at least 26 people and charged them with participating in the violence. Police initially

suggested that a member of parliament was implicated in the violence and would be apprehended. No such arrest had been made at this writing.

Between April and August, in Mandera, over 30 people were killed and thousands temporarily displaced over the border into Ethiopia in clashes between different clans competing for control of districts and constituencies ahead of the elections.

Ongoing tensions since January erupted in August in Tana River, when over 100 people were killed and 200,000 displaced following a series of retaliatory politically motivated attacks. Dhadho Godhana, a member of parliament, was charged with incitement, while other politicians were also believed to be involved in this particular violence.

Kenya's Incursion into Somalia

Since late 2011, unknown people believed to be sympathizers of al-Shabaab, the armed Islamist group fighting the Somali government and allied forces in Somalia, carried out terrorist attacks on civilian targets and security forces in North Eastern Province bordering Somalia, and in Mombasa and the capital, Nairobi.

In the most serious attack, gunmen opened fire and hurled grenades killing 17 and injuring 60 during services at two churches in Garissa on July 1. In Mombasa, gunmen opened fire on a restaurant, a church, and a bar in three separate attacks. Police posts, patrols, and vehicles belonging to government agencies, including the army, were attacked with landmines and improvised explosive devices across North Eastern province, in Wajir, Mandera, Dadaab refugee camps, and at the Liboi border. Two refugees in Dadaab were assassinated in separate attacks at the start of the year.

There were numerous cases where Kenyan security forces responded to the attacks by abusing civilians. Documented abuses included rape and attempted sexual assault; beatings; arbitrary detention; extortion; the looting and destruction of property; and various forms of physical mistreatment, including forcing victims to sit in water, to roll on the ground in baking temperatures, or to carry heavy loads while standing on one spot or while walking around for extended periods. Despite government promises to investigate, there have been no investigations and no security official has faced disciplinary action in relation to the abuses.

Extrajudicial Killings, Disappearances, and Police Reform

In August 2012, unknown gunmen shot dead Islamic preacher Sheikh Aboud Rogo. At the time of his killing, Rogo, who had complained of police threats and requested protection, was facing charges of illegal possession of weapons and recruiting for al-Shabaab. On July 24, he had reported to the police, the Kenyan National Commission on Human Rights, and the court in which he was being tried that unknown assailants had attempted to abduct him and his co-accused, Abubakar Shari Ahmed, when they arrived in Nairobi for the court hearing.

Rogo's killing followed the abductions and deaths earlier in 2012 of several other people charged with recruitment and other offenses related to al-Shabaab. In March, Samir Khan, who was also charged with possessing illegal firearms and recruiting for al-Shabaab, and his friend Mohammed Kassim, were pulled from a public bus in Mombasa by men who stopped the vehicle and identified themselves as police officers. Khan's mutilated body was found a few days later in Tsavo National Park. Kassim's whereabouts remain unknown.

Four other suspected al-Shabaab members facing charges in court disappeared in 2012 after being arrested by people who identified themselves as police, according to local human rights groups.

In response to allegations of police involvement, the DPP, the police, and the Kenya National Commission on Human Rights instituted a joint probe on to investigate Rogo's killing. The killing

prompted renewed calls for police reforms that have stalled. No inspector general has been appointed in the five years since reforms were promised following electoral violence in 2007-2008. A National Police Service Commission that was supposed to vet all police officers ahead of the 2013 elections is not yet operational.

The ICC and Other Post-Election Violence Cases

The International Criminal Court (ICC) set April 2013 trial dates in cases against four prominent Kenyans charged with committing crimes against humanity during the post-election violence of 2007-2008. The ICC prosecutor raised concerns with the Kenyan government that the e-mail accounts of witnesses had been hacked and correspondence accessed, and warned publicly against witness tampering. In March, the Kenyan police arrested blogger Denis Itumbi on suspicion of hacking into the ICC email system, although he was never charged.

The Kenyan government has pledged to cooperate with the ICC, and has committed to national trials of additional perpetrators of the 2007-2008 violence. However, it has failed to create a special mechanism for prosecutions to overcome weaknesses in the existing judicial system. The DPP initially announced that his office would review up to 5,000 cases with the view to prosecuting them ahead of the 2013 elections, but a committee appointed by the DPP to review the cases said in August 2012 it was finding it difficult to obtain evidence and the cases have not proceeded.

In April 2012, an extraordinary summit of East African heads of state attended by Kenya's President Mwai Kibaki, recommended that the mandate of the East African Court of Justice be expanded to include trials for crimes against humanity. The African Union Assembly in July 2012 deferred adoption of a protocol to expand the jurisdiction of the African Court of Justice and Human Rights (ACJHR) to include the prosecution of individuals for international crimes in order to study further the financial and structural implications of any such expansion. Kenya had supported these initiatives, apparently motivated by its interest in creating competing jurisdictions in order to derail the ICC's Kenyan investigations.

Migrant Domestic Workers

Thousands of Kenyan women have migrated to the Middle East as domestic workers in recent years. Many face deception during the poorly regulated recruitment process prior to employment abroad, where they risk a wide range of abuses from long hours of work to slavery-like conditions (see chapter on Saudi Arabia). After a number of high-profile abuse cases, Kenya banned further migration of domestic workers to the Middle East in June 2012. Similar bans enacted by other labor-sending countries have rarely been effective and have increased the risk of irregular migration and trafficking.

Key International Actors

The East African Legislative Assembly (EALA) passed a resolution allowing the expansion of the mandate of the East African Court of Justice (EACJ) to include crimes against humanity. Kenya also supported the decision by the AU to establish a committee to examine how to expand the mandate of the African Court on Human and People's Rights (AfCHPR) to include international crimes.

The United States and European governments have a growing relationship with the Kenyan military as it has become more involved in Somalia.

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